March 19-1878
Judgment
30 — Affirmed

Judge Hall delivered the opinion

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 263.

THE ATLANTIC, TENNESSEE AND OHIO RAILROAD COMPANY, THE CHARLOTTE AND SOUTH CAROLINA RAILROAD COMPANY, JOSEPH H. WILSON AND ANDERSON MITCHELL, APPELLANTS,

vs.

THE CAROLINA NATIONAL BANK OF COLUMBIA, SOUTH CAROLINA, L. D. CHILDS AND C. H. MANSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NORTH CAROLINA.

FILED NOVEMBER 23, 1872.

Cooley Constitutional Limitations
Sec 367
(67 N.C.R. 203
(D.C. 1874

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1 UNITED STATES OF AMERICA,
District of North Carolina:

Circuit court, fourth circuit.

Be it remembered that on the 28th day of April, A. D. 1871, The Carolina National Bank of Columbia, South Carolina, Lysander D. Childs and C. H. Manson, citizens and residents of the State of South Carolina, by their solicitor, Haywood W. Guion, filed their bill in the office of the circuit court of the United States for the district of North Carolina, against The Atlantic, Tennessee and Ohio Ralroad Company in North Carolina, The Charlotte and South Carolina Railroad Company, Joseph H. Wilson and Anderson Mitchell, and gave bond for the prosecution of their said suit in the words and figures following, to wit:

2 UNITED STATES OF AMERICA,
District of North Carolina:

Circuit court, 4th circuit. In equity.

Know all men by these presents that we and each of us promise to pay to Joseph H. Wilson, Anderson Mitchell, The Atlantic, Tennessee & Ohio Railroad Company, and The Charlotte & South Carolina Railroad Company the sum of three hundred dollars; to be void, nevertheless, upon the condition that Lysander D. Childs, C. H. Manson, and The Carolina National Bank of Columbia, South Carolina, do pay to the obligees above named all costs and damages which may be adjudged to them by reason of failure to prosecute a suit in the circuit court of equity for the district of North Carolina against said obligees with success.

Given under *my* hand and seals this 22d day of April, 1871.

L. D. CHILDS. [SEAL.]
C. H. MANSON. [SEAL.]
W. B. GULICK. [SEAL.]
JASPER STOWE. [SEAL.]
THO'S W. DEWEY. [SEAL.]

Which said bill of complaint is in the words and figures following, to wit:

3 To the honorable the judges of the circuit court of the United States for the district of North Carolina, sitting in equity:

Lysander D. Childs of the city of Columbia, State of South Carolina, and a citizen of said State of South Carolina, C. H. Manson of said city of Columbia, and a citizen of said State of South Carolina, and "The Carolina National Bank of Columbia, South Carolina," a body politic and corporate, organized, existing & operating in said city of Columbia, in the State of South Carolina, under & by virtue of an act of the Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," bring this their bill, in behalf of themselves and all others having the like interests, against Joseph H. Wilson of the city of Charlotte, and a citizen of the State of North Carolina, Andrew Mitchell of the town of Statesville, county of Iredell, and a citizen of the State of North Carolina, "The Atlantic, Tennessee and Ohio Railroad Company in North Carolina," a body politic & cor-

porate, organized, existing and operating in North Carolina by virtue of the laws of said State, and "The Charlotte and South Carolina Railroad Company," a body politic and corporate, organized, existing,
4 & operating in said State of North Carolina, by virtue of the laws thereof. And thereupon your orators complain & say:

That The Atlantic, Tennessee & Ohio Railroad Company in North Carolina was duly created and made a body-politic by an act of the general assembly of North Carolina ratified on the 15th day of February, A. D. 1855, and was for several years engaged in the construction of a railroad as prescribed in its charter, and otherwise enjoying the privileges and franchise thereby conferred upon its stockholders. In the early part of the year 1862, the more effectually to prosecute and complete its work, the said company in a regular way, and with all proper authority so to do, issued its coupon bonds in sums of five hundred dollars each, with coupons attached, in the sum of fifteen dollars each, for the semi-annual interest payable on the first days of May and November in the years ensuing the date thereof, until the maturity of such bonds. That, as complainants are informed & believe, all of said bonds were dated the first day of May, 1862—some of them were made payable as to the principal, on the first day of November, 1870, and the residue on the first day of November, 1872. That said bonds, to distinguish one from the other, were regularly numbered from one to inclusive, and with the exception of said numbers and dates of maturity as aforesaid were drawn as follows:

5 "No. —.] [$500.

"STATE OF NORTH CAROLINA,

"*Atlantic, Tennessee & Ohio Railroad Company:*

"On the first day of November, eighteen hundred and (seventy or seventy-two,) the Atlantic, Tennesse' and Ohio Railroad Company in North Carolina, promises to pay to the Charlotte and South Carolina Railroad Company, or bearer, at their office in Charlotte or Statesville, five hundred dollars, with interest at the rate of six per centum per annum, payable semi-annually, according to the tenor and upon the presentation of the coupons hereunto attached. This bond is issued in conformity to the charter, & by the authority of the stockholders of the Atlantic, Tennessee and Ohio Railroad Company in North Carolina, and may be converted into the stock of said company, at par, by the holder.

"In witness whereof the president of said company has signed, and the treasurer has countersigned, this bond, and the seal of said company is hereunto affixed, at Charlotte, this the first day of May, A. D. eighteen hundred & sixty-two."

The coupons attached to said bonds, excepting the differing numbers and dates of payment, were of the following form:

"The treasurer of the Atlantic, Tennessee and Ohio Railroad Company, in North Carolina, will pay to the bearer on the first day of (May or November) fifteen dollars, for interest due on bond No. —.

"$15.00.]

(Signed by) "M. L. WRISTON, *Treasurer.*"

6 To give the greater value to said bonds they were made payable to "The Charlotte and South Carolina Railroad Company," a corporation chartered and existing by and under the laws of North Carolina, and a company of high credit, by which they were endorsed as follows:

"For value received the Charlotte and South Carolina Railroad Company does hereby guarantee the prompt payment of the principal and interest of the within bond at maturity.

(Signed) "W'M JOHNSTON, *President.*"

Further to enhance the value of said bonds the said Atlantic, Tennesse' and Ohio Railroad Company, in North Carolina, by virtue of sundry resolutions of the stockholders thereof, adopted & passed at a general meeting in the town of Charlotte on the 30th day of January, 1862, made, executed, & delivered in due form of law, a certain deed of trust to the defendants, Joseph H. Wilson and Anderson Mitchell, in and by which it conveyed to them, their heirs & assigns, "that portion of the railroad of the said Atlantic, Tennessee and Ohio Railroad, in North Carolina, constructed and to be constructed, between the town of Charlotte, in said county of Mecklenburg, and the town of Statesville, in said county of Iredell, including the right of way, bridges, iron, rails, superstruction, together with the lands used and occupied for depots & stations, with the improvements thereon, and the fran-
7 chise, as well as the rolling-stock to be acquired, excepting, however, any money which may be due on account of stock subscriptions or otherwise, as well as the income of the road, and such real estate as is not necessary for the use, occupation, and enjoyment of the rights of said party of the first part;" and the said property was so conveyed, upon the especial trust as follows:

"In trust for the security of the person or persons who shall become the holders of said bonds about to be issued and negotiated as aforesaid, and indemnity of the Charlotte and South Carolina Railroad Company for guarantying the payment thereof, it being the object, intent, and meaning of the said party of the first part to place all the bond-holders, intended hereby to be secured, upon a basis of equality, subject, nevertheless, to the possession, control, and management (of) the president and directors of said party of the first part, so long as said party shall well & truly perform all and singular the stipulations of the said bonds and the covenants of this indenture; and in case the said party of the first part shall fail to pay the principal or any part thereof, or any of the interest accruing on said bonds, when the same shall have become due and payable according to the tenor thereof, when demanded, then after the expiration of days from such default, upon the written request of the holder of said bonds, the principal and interest of
8 which remains unpaid, or upon the written request of the guarantee of said bonds after such failure to pay as aforesaid, the said party of the second part shall proceed to sell the property & estate hereby conveyed, or so much thereof as may be necessay to pay and discharge the principal and interest of such of said bonds as may be then unpaid, whether due or not due, be sold at public auction for ready money, in the town of Charlotte, in the State of North Carolina, and shall execute to the purchaser or purchasers, a title therefor, but without covenants or warranty; and out of the proceeds of such sale the parties of the second part shall pay, first, the costs and expenses of sale, including a reasonable commission to the said parties of the second part for their services; and secondly, whatsoever shall be unpaid in any of said bonds, whether due or not due, if the proceeds of such sale shall be sufficient to pay the same in full, but if such sale shall not be sufficient to pay all of said bon's, whether due or not due, with their accrued interest, then, and in that case, the proceeds of sale shall be distributed among the holders of said bonds, whether due or not due, in pari paper.

But before any such sale take place, the said parties of the second part shall advertise the time, place, and terms of sale, and the specified property and estate to be sold, for at least sixty days, in a newspaper published respectively in the following places, to wit, in the cities of Columbia, S. C., and Raleigh and Charlotte, N. C. It is the un-
9 derstanding and agreement of the parties that in case *of* the said parties of the first part to any of sale shall well and truly pay all sum or sums due upon said bonds for the payment of the principal or interest, of which said party of the first part shall be in default, then, and in that event, this power hereby vested in said parties of the second part to sell said property, shall cease; and the said party of the first part doth hereby covenant, stipulate, and agree to and with the said parties of the second part, for the use and benefit of the cestuie que trust herein declared, that the money obtained by the negotiation of the bonds aforesaid shall be applied in good faith to the purposes herein set forth and declared, and further to make, execute, and deliver such further assurances and conveyances from time to time as counsel learned in the law may advise to be necessary for the better effectuating and perfecting the object, intent, and meaning of these presents."

Which said deed of trust was accepted by the defendants, Joseph H. Wilson and Anderson Mitchell, as trustees; and was also proven & recorded on the 29th day of May, 1862, and duly registered, as required by the laws of North Carolina, a certified copy whereof complainants are ready to produce whenever thereto required by this honorable court.

Your orators further shew that the said Charlotte & South Carolina Railroad Company endorsed and guaranteed the payment of said
10 bonds & coupons merely as a surety, and they were retained by the Atlantic, Tennessee & Ohio Railroad Company in North Carolina, and were sold and issued by it, as purchasers therefor could be found, as is usual with such kinds of securities.

Further complaining, your orators shew, the *the* board of directors of said Atlantic, Tennesse' & Ohio Railroad Company in North Carolina, were authorized by the resolutions of the stockholders thereof in the general meeting before mentioned to issue, negotiate, & sell bonds as above described to the amount of two hundred and fifty thousand dollars, & that in pursuance of said authority they did sell and put in circulation a large number of the size and character above set forth, with coupons attached, signed by the president, and countersigned by the treasurer, attested by the seal of the corporation, imprinted with different colours, and embellished with vignettes and ornaments common to such commercial securities. But what was the aggregate number issued, or what number have been redeemed, or what are outstanding in the hands of other parties, or who are the holders thereof, your orators do not know, and cannot therefore make them parties to this suit, which is brought as well in their behalf, if any such there be, as in behalf of your orators specially.

That in the first of the year 1870 your orators L. D. Childs,
11 after a careful inquiry as to the character and value of said bonds, and learning from the reports of said company & from other sources that said company had paid off many of said bonds so issued as aforesaid, with the interest due thereon, as a safe mode of investment, purchased from the receiver of the Exchange Bank in South Carolina a number of them, bona-fide for value paid, and without notice of any exception thereto whatever, viz: Those bonds having the numbers 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, & 218, all dated the first day of May, A. D. eighteen hundred & sixty-

two, and payable, as to the principal thereof, on the first day of November, A. D. eighteen hundred & seventy-two. That upon each of said bonds there are now past due fifteen coupons of the value of fifteen dollars each, for the semi-annual interest accrued in the years next previous to the institution of this suit, which belong to your orator L. D. Childs. And that he is also the bona-fide holder, and owner as aforesaid, of fifteen other coupons detached from bond Number 208, for the semi-annual interest accrued on said bond. That payment of said interest due upon said coupons has been regularly demanded from said Atlantic, Tennesse' and Ohio Railroad Company, but the same was and still is denied & refused.

Your orator C. H. Manson shews to your honors that he is the
12 bona-fide owner, for value, without notice of any exception whatever, of a number of said bonds so issued as aforesaid, dated and falling due as those last above mentioned, bearing numbers as follows: No. 208, 219, 220, 231, 232, 233, 234, 235, 236, 237, 238, 239, & 240, on each of which and attached thereto there are fifteen coupons for the semi-annual interest now past due, except on bond number 201, on which there are only 14 coupons past due, and on number 208 only one coupon due for interest in arrear, the property of this complainant. He further shews that payment of said interest has been regularly demanded from said Atlantic, Tennessee and Ohio Railroad Company, but the same has been and still is denied and refused.

And your orator "The Carolina National Bank of Columbia, South Carolina," shews to your honors that, in the regular course of its business, it for value purchased, and now, as bona-fide holder and without notice of any exception whatever, owns a large number of said bonds, viz: Bond number 90 dated the first day of May, 1862, and made due and payable on the first day of November, 1870, now last past, with two coupons to the same belonging, for the semi-annual interest payable on the 1st of May & November, 1870. And the following as to the principal payable on the first day of November, 1872: Number 241,
13 242, 243, 244, 245, 246, 247, 248, 249, 250, 221, 222, 223, 224, 225, 226, 227, 228, 229, and 230, on each of which there are 15 coupons for the semi-annual interest now past due, and also certain other coupons past due detached from bonds bearing the numbers 253, 254, 255, 256, 257, 260, 261, 262, 263, and 264; two of them for each of said bonds, the one for the semi-annual interest due 1st of May, 1870, and the other due 1st of November, 1870. All of which coupons and bond number 90 have been presented to said Atlantic, Tennesse' and Ohio Railroad Company for payment, but the same has been and still is denied and refused.

And your orators shew to your honors that, by the provisions of said deed of trust, it is stipulated that the principal of said bonds shall become due & payable when said railroad company shall make default in payment of the interest or any part thereof, and it shall be necessary to execute the trusts therein mentioned, and they therefore claim and ask that the payment not only of the interest past due on said coupons, but also the principal money of the bonds themselves may be decreed to them.

And your orators further shew that, they have severally notified the defendants Joseph H. Wilson and Andrew Mitchell, the trustees as above mentioned, of the default of the said Atlantic, Tennessee and Ohio Railroad Company in paying the principal and interest of bond number 90 & the interest due on the other coupons mentioned;
14 and in writing have severally requested that said trustees

would and should proceed to advertise and sell the property mentioned in said deed of trust, and distribute the proceeds agreeable to its provisions; but that said trustees refuse to comply with the reasonable requests of your orators, alleging that they are advised by said railroad company that said bonds and interest are solvable in confederate values and subject to be scaled to equivalents in present currency, and that said railroad company is ready to pay in Federal currency the confederate values of said bonds & interest. The contrary whereof your orators charge to be true, and over that said railroad, for the purposes of delay, and to harrass your orators, has invented such pretence, whilst it is without the means of payment; and they further over that, until the present holders purchased said bonds, it was never conceived or alleged that they were payable in confederate money, but on the other hand large numbers of said bonds & coupons have been redeemed by said company, as if payable in Federal values, and so published the same in its reports of stockholders' meetings to the world, and that the president of said company and its other officers have owned and been paid for them, without any scale for confederate value, and have announced, and to divers persons, to induce them to take them, that they were not payable in confederate values, but in actual and substantial dollars as called for on their face.

15 And your orators shew that such reports, declarations, and proceedings were had and made prior to the purchase of the same by your orators, and that defendants are thereby estopped from insisting upon any such defence.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon the several and respective corporal oaths, (of the personal defendants and the presidents of said railroad corporations,) and according to the best & utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer; that is to say:

1st. Whether the said Atlantic, Tennesse' and Ohio Railroad Company in North Carolina, did not make, execute, and issue its coupon bonds, & procure the endorsement of the Charlotte and South Carolina Railroad Company thereon, as herein recited?

2nd. Whether the said company did not make, execute, and deliver the deed of trust, as herein set forth, to the defendants Joseph H. Wilson and Anderson Mitchell, as trustees, for securing the payment of the principal and interest of said bonds as above set forth?

16 3rd. Whether *payment of* bond number 90, and the coupons herein mentioned, have not been presented for payment, and the same been refused by said railroad company?

4th. Whether said bond and coupons are not still due and unpaid?

5th. Whether a large number of the bonds & coupons of said issue have not been paid and redeemed by said Atlantic, Tennesse' & Ohio Railroad Company without any scale on account of confederate currency; and are not so charged and entered on the books of said company?

6th. Whether the president and other officers of said company have not repeatedly stated to members of the community, or some of them that said bonds were not confederate paper, but payable in sound cur, rency?

7th. Whether the president and other officers of said railroad com-

pany have not owned and held large numbers of said bonds, & had the same redeemed without any deduction on account of confederate values?

And that an account may be taken of what is due to your orators respectively, as well for principal as interest, and that the defendants Joseph H. Wilson and Anderson Mitchell be decreed to sell the
17 property conveyed to and held by them as trustees, for the payment of such principal and interest, and that your orators may be further and otherwise relieved in the premises according to equity and good conscience.

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the defendants, "The Atlantic, Tennessee and Ohio Railroad Company in North Carolina," "The Charlotte and South Carolina Railroad Company," Joseph H. Wilson and Anderson Mitchell, thereby commanding them and every of them at a certain day, and under a certain pain therein to be inserted, to be and appear before your honors in this honorable court, and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to this honorable court shall seem meet.

And your orators shall ever pray.

H. W. GUION, *Sol.*,
Counsel for Pl'ffs.

NOTE.—The Atlantic, Tennessee and Ohio Railroad Company in North Carolina, and through its president, upon his oath, and other officers, is required to answer all of the interrogatories numbered 1, 2, 3, 4, 5, 6, & 7.

18 The Charlotte and South Carolina Railroad Company is required to answer all of the interrogations numbered 1, 2, 3, 4, 5, 6, and 7.

The defendants Joseph H. Wilson and Anderson Mitchell are required to answer the interrogations numbered 1, 2, 5, 6, and 7.

19 *Deed of trust referred to in the bill of complaint.*

This indenture, made this day of , 1862, between the Atlantic, Tennessee and Ohio Railroad Company in North Carolina, a corporation duly constituted by the laws of the State of North Carolina, party of the first part, and Joseph H. Wilson, of the county of Mecklenburg, and Anderson Mitchell, of the county of Iredell, and State of N. Carolina, parties of the second part.

Whereas the said party of the first part, in pursuance of the powers conferred by its charter, is now engaged in constructing, and for the purpose of enabling the corporation to prosecute its work of construction, discharge all its outstanding debts and liabilities, and purchase cars, engines, and equipments for the road, the president and directors have deemed it judicious to make a loan of money, to an amount not exceeding two hundred and fifty thousand dollars, for the purpose of completing said road from the town of Charlotte, in said county of Mecklenburg, to the town of Statesville, in said county of Iredell, and to secure the payment thereof to execute bonds of the corporation in the sum of five hundred dollars each, not to exceed in the aggregate issue the sum of two hundred and *thirty* thousand dollars as aforesaid, bearing
20 interest at the rate of six per centum per annum, with interest-coupons attached, payable semi-annually. The payment of the

principal & interest is secured by the guaranty of the Charlotte and South Carolina Railroad Company endorsed thereon; which said bonds and guaranty of the following form, to wit:

No. 500. State of North Carolina, on the first day , anno Domini eighteen hundred & , the Atlantic, Tennessee & Ohio Railroad Company in North Carolina, promise to pay to the Charlotte and South Carolina Railroad Company, or bearer, at their office in Charlotte or Statesville, five hundred dollars, with interest at the rate of six per centum per annum, payable semi-annually, according to the tenor and upon the presentation of the coupon hereto attached. This bond is issued in conformity to the charter, and by the authority of the stockholders of the Atlantic, Tennessee & Ohio Railroad Company, in North Carolina, and may be converted into the stock of said company, at par, by the holders. In witness whereof the president of said company has signed and the treasurer has countersigned this bond, and the seal of the corporation is hereunto affixed, at Charlotte, the day of , A. D. 186 .

[SEAL.] *President.*

Treasurer.

For value received, the Charlotte and South Carolina Railroad Company does hereby guaranty the prompt payment of the principal and interest of the within bond at maturity.

President.

To be negotiated by the said party of the first part, payable at such times as be agreed upon by the contracting parties, which said bonds were authorized by the stockholders of the said parties of the
21 first to be issued, as will fully appear by the resolutions adopted at their general meeting, held in the town of Charlotte on the 30th day of January, 1862, to that effect, which are as follows, to wit: "Resolved, That the president and directors be and are hereby authorized to issue bonds of the company, with the endorsement of the Charlotte and South Carolina Railroad Company, to an amount not exceeding two hundred and fifty thousand dollars, payable at their discretion, bearing interest at the rate of six per centum per annum, with coupons payable semi-annually. Resolved, That in order to secure the prompt payment of the principal and interest of said bonds at maturity, that a mortgage or a deed of trust of the road, finished and to be finished, with all its fixtures, appertaining, and depots, when completed, and land upon which they are situated, including franchise, be executed according to the provisions of the charter. Resolved, That the proceeds of said bonds, when sold, be applied to the discharge of the debts and liabilities of the company, and to the purchase of cars, engines, and other equipments of the road when deemed necessary by the president & directors."

Now, therefore, this indenture witnesseth that the said party of the first part, for and in consideration of the sum of ten dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the further consideration of the trust hereinafter declared, hath bargained, sold, aliened, transferred, and confirmed, and by these presents doth bargain, sell, alien, transfer, and confirm unto the said parties of the second part, their heirs and assigns, that portion of the railroad of the said party of the first part constructed and to be constructed between the town of Charlotte, in said

22 county of Mecklenburg, and the town of Statesville, in said county of Iredell, including the right of way, bridges, iron rails, superstruction, together with the lands used and occupied for depots & stations, with the improvements thereon, and the franchise, as well as the rolling-stock to be acquired, excepting, however, any money which may be due to the said party of the first part on account of stock subscriptions, or otherwise, as well as the income of the road and such real estate as is not necessary for the use, occupation, and enjoyment of the rights of said party of the first part: to have and to hold the estate and property aforesaid, and every part and parcel thereof, unto the said party of the second part, their heirs and assigns, forever, in trust, for the security of the person or persons who shall become the holders of said bonds about to be issued and negotiated as aforesaid, and indemnity of the Charlotte & South Carolina Railroad Company for guarantying the payment thereof, it being the object, intent, and meaning of the said party of the first part to place all the bondholders intended hereby to be secured upon a basis of equality, subject, nevertheless, to the possession, control, and management the president and directors of said party of the first part so long as said party shall well and truly perform all and singular the stipulations of the said bonds and the covenants of this indenture. And in case the said party of the first part shall fail to pay the principal, or any part thereof, or any of the interest accruing on said bonds when the same shall become due and payable according to the tenor thereof when demanded, then after the expiration of days from such default, upon the written request of the holder of any of said bonds, the principal and interest of 23 which remains unpaid, or upon the written request of the guarantee of said bonds after such failure to pay, as aforesaid, the said party of the second part shall proceed to sell the property and estate hereby conveyed, or so much thereof as may be necessary to pay and discharge the principal and interest of such of said bonds as may be then unpaid, whether due or not due, be sold at public auction for ready money, in the town of Charlotte, in the State of N. C., and shall execute to the purchaser or purchasers a title therefor, but without covenants or warranty, and out of the proceeds of such sale the said parties of the second part shall pay, first, the costs and expenses of sale, including a reasonable commission to the said parties of the second part for their services, and secondly, whatsoever shall be unpaid in any of said bonds, whether due or not due, if the proceeds of such sale shall be sufficient to pay the same in full; but if such sales shall not be sufficient to pay all of said bonds, whether due or not due, with their accrued interest, then and in that case the proceeds of sale shall be distributed among the holders of said bonds, whether due or not due, in pari passu. But before any such sale take place the said parties of the second part shall advertise the time, place, and terms of sale, and the specified property and estate to be sold, for at least sixty days, in a newspaper published, respectively, in the following places, to wit, in the cities of Columbia, S. C., and Raleigh and Charlotte, N. C. It is the understanding and agreement of the parties that in case *of* the said parties of the first part to any *of* sale shall well and truly pay all sum or sums due upon said bonds, for the payment of principal or in- 24 terest of which said party of the first part shall be in default, then and in that event this power hereby vested in said parties of the second part to sell said property shall cease; and the said party of the first part doth hereby covenant, stipulate, and agree to and with the said parties of the second part, for the use and benefit of the cestue que

trust, herein declared, that the money obtained by the negotiation of the bonds aforesaid shall be applied, in good faith, to the purposes herein set forth and declared; and further, to make, execute, and deliver such other and further assurances and conveyances, from time to time, as counsel learned in the law may advise to be necessary for the better effectuating and perfecting the object, intent, and meaning of these presents.

In witness whereof the said party of the first part hath hereunto affixed its corporate seal, and W'm Johnston, the president thereof, and David Parks and John J. Blackwood, each members of said corporation, have signed their names.

W'M JOHNSTON,
Pres't Atlantic, T. & O. R. R. Co., N. C.
JOHN J. BLACKWOOD.
DAVID PARKS.

Signed, sealed, and delivered in presence of—
M. L. WRISTON.

STATE OF NORTH CAROLINA,
Mecklenburg County:

I certify that the execution of the within and foregoing mortgage or deed of trust was duly proven before me by the oath of M. L. Wriston, the subscribing witness thereto, and recorded in my office the 29th day of May, 1862. Let it, this certificate and receipt for tax, be registered.

W. K. REID, *C. C. C.*

Rec'd tax, $1.00, 29th May, 1862.

W. K. REID, *C. C. C.*

25 STATE OF NORTH CAROLINA,
Mecklenburg County:

I, W'm Maxwell, public register of the county and State aforesaid, do hereby certify that the foregoing is a true copy of a certain mortgage or deed of trust from the Atlantic, Tennessee and Ohio Railroad Company in North Carolina, to Joseph H. Wilson and Anderson Mitchell, bearing date day of 1862, and of the certificate of its probate, as appears from the enrolement thereof in a certain book in said office of which I am keeper.

In testimony whereof I have hereunto set my hand and affixed the seal of Mecklenburg County, at office in Charlotte, the 31st day of March, 1871.

[SEAL.] W'M MAXWELL,
Register of Deeds in Mecklenburg County, North Carolina.

And thereupon, at the request and by the direction of the said complainants, by their solicitor aforesaid, writs of subpœna are issued in pursuance of the prayer of the said bill of complaint against the said defendants, returnable on the first Monday in June, A. D. 1871, which said writs of subpœna are in the following words and figures, to wit:

26 UNITED STATES OF AMERICA,
District of North Carolina, ss:

The United States of America to The Atlantic, Tennessee and Ohio Railroad Company in North Carolina; "The Charlotte and South Carolina Railroad Company;" Joseph H. Wilson and Anderson Mitchell.

We command you, and every one of you, that you appear before the judges of our circuit court of the United States of America, for the district of North Carolina, at the office of the clerk of the said court, in the city of Raleigh, in said district, on the first Monday in the month of June next, to answer the bill of complaint of "The Carolina National Bank of Columbia, South Carolina," Lysander D. Childs, & C. H. Manson, filed in the clerk's office of said court, in said city of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of North Carolina to execute.

Witness, the Hon, Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the last Monday in November, 1870, and in the ninety-fifth year of the Independence of the United States.

Issued 28th day of April, 1871.

[L. S.] N. J. RIDDICK, *Clerk.*

(Indorsed:) No. . United States circuit court. District of North Carolina, vs. . Equity subpœna. Returnable the first Monday in , 187 .

27 MEMORANDUM. The within-named defendants are notified that unless they enter their appearance in the clerk's office of said circuit court, at Raleigh aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

N. J. RIDDICK, *Clerk.*

And on the return day of said writs, to wit, on the first Monday of June, 1871, the same being a rule day at the clerk's office of this court, the said writs are returned, "service accepted" by each of the said defendants.

On the 21st day of June, 1871, an agreement between the parties is filed, as also the answers to the said bill of complaint by the said defendants, which said agreement an' several answers are in the words and figures following, to wit:

28 In the circuit court of the United States, district of North Carolina.

THE CAROLINA NATIONAL BANK, OF COLUMBIA S. C., & others, *vs.* THE ATLANTIC, TENNESSEE & OHIO R. R. Co., & others. } In equity.

In the above-entitled cause, it is, by consent, ordered, that defendants have leave to file their answers by or before the fourth Monday in June, 1871, as if filed on the first Monday of this month. And it is further agreed that the depositions heretofore taken in a case at law in the Mecklenburg justice's court, between the Carolina National Bank of Columbia, S. C., and The Atlantic, Tennessee & Ohio R. R. Co., may be copied in full, & such copies used as testimony in this cause.

June 12th, 1871.

H. W. GUION, *Sol. pro Pl'ffs.*
JOS. H. WILSON, *Pro Def'dts.*

29 UNITED STATES OF AMERICA,
North Carolina District:

Circuit court, 4th circuit.

The answer of the Atlantic, Tennessee & Ohio Railroad Company, in North Carolina, and the Charlotte & South Carolina Railroad Company, defendants, to the bill of complaint of Lysander D. Childs, C. H. Manson, and the Carolina National Bank of Columbia, South Carolina, plaintiffs.

Defendants, reserving to themselves all right of exception to the said bill, for answer thereto, according to information, say they admit that they are corporations created by law; that, for the purpose of prosecuting the construction of the road of the Atlantic, Tennessee and Ohio Railroad Company, said defendant issued its bonds for the purpose of raising money, in sums and in form as charged, which were guarranteed, as stated, by the defendant, The Charlotte & South Carolina Railroad Company, and, as additional collateral security for the payment of said bonds, the defendant, The Atlantic, Tennessee & Ohio Railroad Company, made a conveyance, by deed of trust, of its property to Jos. H. Wilson and Anderson Mitchell, as is therein stated; that the number of bonds authorized to be issued were two hundred and fifty thousand dollars, but only one hundred and fifty-one thousand dollars of that amount were actually issued and negotiated; that ninety-five
30 thousand dollars of the amount issued and negotiated have been redeemed by defendant, leaving fifty-six thousand dollars still outstanding and unpaid; that said issue of bonds were dated as of the 1st of May, 1862, and thereafter negotiated and sold as purchasers therefor could be found; that the bonds in question now held by plaintiffs, amounting in the aggregate to twenty-five thousand dollars, were of that issue, and were negotiated and sold by the Atlantic, Tennessee & Ohio Railroad Company, through the agency of its president, William Johnston, in Columbia, South Carolina, to the Exchange Bank of that place, through its president, Rufus M. Johnston, acting in behalf of said bank, on the 27th day of May, 1862; that the contract of sale of said bonds was solvable in confederate currency, to wit, treasury notes of the confederate government, and that kind of currency accepted in payment therefor; that the amount paid by said bank for the twenty-five thousand dollars of bonds thus purchased by it was twenty-three thousand one hundred and fifty-six $\frac{14}{100}$ dollars, being about ninety-two $\frac{7}{12}$ cents on the dollar; at that time, to wit, the 27th of May, 1862, confederate currency in Columbia was at a discount of one dollar and eighty cents ($1.80) for one dollar in gold; that said bonds were solvable in that kind of currency; that said bonds were purchased by plaintiffs
31 from the receiver of said Exchange Bank at or about the same time, in the year 1870; that the purchase was made by them on speculation and at large discount, and they had notice that said bonds would not be paid without being scaled on account of the depreciation of confederate money.

Further answering, defendants do not admit that plaintiffs are the owners of the bonds indicated by the numbers as set forth in their bill, or the number of interest-coupons alleged to be due, or the time said bonds are alleged to be due, but insist that said allegations shall be sustained by proof.

For further answer, defendants aver that they have at all times been

ready to adjust said indebtedness upon a fair and just basis of the value of said bonds and due coupons in lawful money of the United States, and a readiness and ability at all times to discharge said liabilities as soon as their value could be ascertained, and are now ready to do so, but plaintiffs demanded payment in full of said bonds and all accrued interest in lawful money of the United States, with which unreasonable demand defendants refused to comply.

Further answering, defendants deny that any of the bonds of the issue aforesaid have been redeemed at par or in full in lawful money of the United States, but, on the contrary, aver that the bonds
32 which have been redeemed were done so at a large discount—some at a rate not exceeding fifty cents on the dollar, others at higher rates, and others in exchange at par for the bonds of the Charlotte and South Carolina Railroad Company having over twenty years to run, and which latter bonds at the time were at a large discount in Federal currency; that, of the bonds thus redeemed, a portion of them had matured when redeemed, and another portion were retired as aforesaid prior to maturity.

Further answering, defendants state that, at the time said bonds were negotiated, it was believed by *its* officers that said bonds were good securities, and, as is believed, was so declared by them, but that after July, 1863, no declarations were made by its officers that said securities were regarded otherwise than of confederate value; that some of the officers did own some of said bonds which were exchanged for the bonds of the defendant, the Charlotte and South Carolina Railroad Company, as has herein been stated; that the books of the defendant, the A., T. & O. R. R. Co., showed a general statement of its liabilities and assets. When any of its liabilities were paid credit was given for the nominal amount of the debt discharged, while its treasurer took credit for the actual sum disbursed.

33 Further answering, defendants deny that any other matter or thing in plaintiffs' bill contained, which is herein not sufficiently answered, traversed, or denied, is true, and, having answered, pray to be hence dismissed, &c.

[L. S.] JOS. H. WILSON,
Att'y for Defendants.

William Johnston makes oath that he is president of both of the defendants; that the facts set forth in the foregoing answer, as of his own knowledge, are true, and those as of his information and belief he believes to be true.

W'M JOHNSTON.

Sworn and subscribed before me this 17th day of June, A. D. 1871.
F. W. AHRENS,
U. S. Commissioner.

34 UNITED STATES OF AMERICA,
North Carolina District:

Circuit court, 4th circuit.

The joint answer of Joseph H. Wilson and Anderson Mitchell, defendants, to the bill of complaint of Lysander D. Childs, C. H. Manson, and The Carolina National Bank of Columbia, South Carolina, plaintiffs.

Defendants, reserving to themselves all right of exception to the said bill, for answer thereto, say they have no personal knowledge of the issue of bonds by the Atlantic, Tennessee & Ohio Railroad Company, endorsed by the Charlotte and South Carolina Railroad Company, but have been informed and believe that such an issue of bonds was made by the former corporation and the payment thereof gurranteed by the latter; that they have no knowledge personally of the amount of such issue, but have been informed and believe that the number issued and negotiated amounted, in the ag'regate, to about one hundred and fifty-one thousand dollars. It is true, as charged, that the Atlantic, Tennessee & Ohio Railroad Company did make and deliver to these defendants a deed of trust of its property as additional collateral security for the payment of its issue of bonds, the substantial provisions of which are believed to be correctly set forth in plaintiff's bill. That they have no personal knowledge of the number of the bonds of said is-
35 sue which have been paid an' redeemed by said A., T. & O. R. R. Company, or the terms upon which such payment or redemption were made; or of any entries or charges in the books of said company; nor have they any personal knowledge of any statement of the president or other officers of said company that said bonds were not confederate paper, but payable in lawful money; nor have they any personal knowledge of the officers of said railroad company owning said bonds, and having the same redeemed without any deduction on account of confederate values. That they refer to and adopt the answer of their co-defendants as containing all the information they have on these various matters, which information respondents believe to be true.

Further answering, respondents say it is true that they have been notified by plaintiffs, through their attorney, of the default of the A., T. & O. Railr. Company in paying its alleged indebtedness to them, and, for the payment thereof, they have been requested to take steps for the sale of the property conveyed to them by the deed of trust aforesaid; but they have been prevented from so doing on account of the conflict or difference between plaintiffs and the officers of said company as to the measure of value of the bonds of said company held by the plaint-
iffs, the latter claiming payment in full of said indebtedness, in
36 lawful money of the United States, and the former claiming that said bonds are solvable in confederate currency, and, as such, are legally liable to be scaled to their true value in United States money.

Further answering, respondents say that they are ready and willing to perform the trusts devolved upon them by said deed of trust, and submit to such direction and decree as may be made in the premises. Having answered, &c.

R. BARRINGER.

Jo's H. Wilson makes oath that the facts set forth in the foregoing answer, as of his own knowledge, are true, and those otherwise stated he believes to be true

JO'S H. WILSON.

Sworn & subscribed before me this 17th day of June, A. D. 1871.

F. W. AHRENS,
U. S. Commissioner.

37 **An act to determine the value of contracts made in Confederate States notes, or their equivalents.**

No. 187.

Whereas, during the years 1861, 1862, 1863, 1864, and part of the year 1865, in the exchange & transfer of real & personal property, Confederate States notes, issued by the so-called Confederate States government, were used as a basis of value or medium of exchange; and whereas the value of said Confederate States notes was greatly less than the lawful money of the United States; and whereas the payment of debts and obligations contracted during said years in said Confederate States notes is now sought to be enforced in the lawful money of the United States: Therefore,

Value of debts.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of South Carolina, now met and sitting in general assembly, and by the authority of the same,* That the value of all debts and obligations, whether under seal or not under seal, created or contracted in Confederate States notes, or with reference to Confederate States notes as a basis of value, issued by the so-called Confederate States government, or in or by any bills, bonds, or notes assimilated or made equivalent in value to Confederate States notes by any law or custom of trade during the years 1861, 1862, 1863, 1864, and 1865, shall be determined by the value of said Confederate States notes in the lawful money of the United States at the time such debts or obligations were created or contracted.

38 SEC. 2. Pursuant to the preceeding section, the value of one dollar of lawful money of the United States in said Confederate States notes, is declared as follows, namely:

January and February, 1861.

1. During January and February, 1861, one dollar of lawful money was equal to one dollar and five cents of Confederate States notes.

March.

2. During March, 1861, one dollar of lawful money was equal to one dollar and six cents of Confederate States notes.

April.

3. During April, 1861, one dollar of lawful money was equal to one dollar and seven cents of Confederate States notes.

4. During May, 1861, one dollar of lawful money was equal to one dollar and eight cents of Confederate States notes.

June.

5. During June, 1861, one dollar of lawful money was equal to one dollar and nine cents of Confederate States notes.

July and August.

6. During July and August, 1861, one dollar of lawful money was equal to one dollar and ten cents of Confederate States notes.

September.

7. During September, 1861, one dollar of lawful money was equal to one dollar and eleven cents of Confederate States notes.

October.

8. On the first day of October, 1861, one dollar of lawful money was equal to one dollar and twelve cents of Confederate States notes, and from day to day thereafter regu-

larly increased in value, until the thirty-first day of October, 1861, when one dollar of lawful money was equal to one dollar and fifteen cents of Confederate States notes.

November. 9. On the first day of November, 1861, one dollar of lawful money was equal to one dollar and fifteen cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth of November, 1861, when one dollar of lawful money was equal to one dollar and twenty cents of Confederate States notes.

December. 10. On the first day of December, 1861, one dollar of lawful money was equal to one dollar and twenty cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of December, 1861, when one dollar of lawful money was equal to one dollar and thirty cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of December, 1861, when one dollar of lawful money was equal to one dollar and twenty cents of Confederate States notes.

1862.—January. 11. On the first day of January, 1862, one dollar of lawful money was equal to one dollar and twenty cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of January, 1862, when one dollar of lawful money was equal to one dollar and twenty-two cents of Confederate States notes.

February. 12. On the first day of February, 1862, one dollar of lawful money was equal to one dollar and twenty-two cents of Confederate States notes, and from day to day thereafter regularly increased in value until the twenty-eighth day of February, 1862, when one dollar of lawful money was
40 equal to one dollar and forty-eight cents of Confederate States notes.

March. 13. On the first day of March, 1862, one dollar of lawful money was equal to one dollar and forty-eight cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of March, 1862, when one dollar of lawful money was equal to one dollar and seventy-three cents of Confederate States notes.

April. 14. On the first day of April, 1862, one dollar of lawful money was equal to one dollar and seventy-three cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth day of April, 1862, when one dollar of lawful money was equal to one dollar and eighty-seven cents of Confederate States notes.

May. 15. On the first day of May, 1862, one dollar of lawful money was equal to one dollar and eighty-seven cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of May, 1862, when one dollar of lawful money was equal to one dollar and eighty-nine cents of Confederate States notes.

June. 16. On the first day of June, 1862, one dollar of lawful money was equal to one dollar and eighty-nine cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth day of June,

1862, when one dollar of lawful money was equal to one dollar and ninety cents of Confederate States notes.

41 17. On the first day of July, 1862, one dollar of lawful money was equal to one dollar and ninety cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the twentieth day of July, 1862, when one dollar of lawful money was equal to one dollar and eighty-three cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of July, 1862, when one dollar of lawful money was equal to one dollar and ninety cents of Confederate States notes. July.

18. On the first day of August, 1862, one dollar of lawful money was equal to one dollar and ninety cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of August, 1862, when one dollar of lawful money was equal to two dollars and seventeen cents of Confederate States notes. August.

19. On the first day of September, 1862, one dollar of lawful money was equal to two dollars and seventeen cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth day of September, 1862, when one dollar of lawful money was equal to two dollars and twenty-three cents of Confederate States notes. September.

20. On the first day of October, 1862, one dollar of lawful money was equal to two dollars and twenty-three cents in Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of October, 1862, when one dollar of *dollar of* lawful money

42 was equal to two dollars and thirty cents of Confederate States notes. October.

21. On the first day of November, 1862, one dollar of lawful money was equal to two dollars and thirty cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth day of November, 1862, when one dollar of lawful money was equal to two dollars and thirty-three cents of Confederate States notes. November.

22. On the first day of December, 1862, one dollar of lawful money was equal to two dollars and *and* thirty-three cents in Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of December, 1862, when one dollar of lawful money was equal to two dollars and thirty cents of Confederate States notes. December.

23. On the first day of January, 1863, one dollar of lawful money was equal to two dollars and thirty cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of January, 1863, when one dollar of lawful money was equal to one dollar and ninety-four cents of Confederate States notes. 1863.—January.

24. On the first day of February, 1863, one dollar of lawful money was equal to one dollar and ninety-four cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the 28th day of Febru- February.

ary, 1863, when one dollar of lawful money was equal to one dollar and eighty-nine cents of Confederate States notes.

March. 43 25. On the first day of March, 1863, one dollar of lawful money was equal to one dollar and eighty-nine cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of March, 1863, when one dollar of lawful money was equal to three dollars and fifty cents of Confederate States notes.

April. 26. On the first day of April, 1863, one dollar of lawful money was equal to three dollars and fifty cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth day of April, 1863, when one dollar of lawful money was equal to three dollars and eighty cents of Confederate States notes.

May. 27. On the first day of May, 1863, one dollar of lawful money was equal to three dollars and eighty cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of May, 1863, when one dollar of lawful money was equal to four dollars and forty-eight cents of Confederate States notes.

June. 28. On the first day of June, 1863, one dollar of lawful money was equal to *to* four dollars and forty-five cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of June, 1863, when one dollar of lawful money was equal to five dollars and thirteen cents of Confederate States notes, and from day to day thereafter regularly increased until 44 the thirtieth day of June, 1863, when one dollar of lawful money was equal to five dollars and forty-seven cents of Confederate States notes.

July. 29. On the first day of July, 1863, one dollar of lawful money was equal to five dollars and fifty-one cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of July, 1863, when one dollar of lawful money was equal to seven dollars and seventy-five cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of July, 1863, when one dollar of lawful money was equal to ten dollars and ninety-three cents of Confederate States notes.

August. 30. On the first day of August, 1863, one dollar of lawful money was equal to ten dollars and eighty-five cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of August, 1863, when one dollar of lawful money was equal to twelve dollars of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of August, 1863, when one dollar of lawful money was equal to eleven dollars and two cents of Confederate States notes.

September. 31. On the first day of September, 1863, one dollar of lawful money was equal to eleven dollars and two cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the fifteenth day of Sep-

tember, 1863, when one dollar of lawful money was equal to ten dollars and sixty-eight cents of Confederate States notes, and from day to day thereafter regularly
45 decreased in value until the thirtieth day of September, 1863, when one dollar of lawful money was equal to nine dollars and twenty-two cents of Confederate States notes.

32. On the first day of October, 1863, one dollar of lawful money was equal to nine dollars and twenty-two cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the fifteenth day of October, 1863, when one dollar of lawful money was equal to eight dollars and one cent of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of October, 1863, when one dollar of lawful money was equal to eight dollars and ninety-six cents of Confederate States notes. October.

33. On the first day of November, 1863, one dollar of lawful money was equal to eight dollars and ninety-six cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of November, 1863, when one dollar of lawful money was equal to ten dollars and fifty-four cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth day of November, 1863, when one dollar of lawful money was equal to thirteen dollars and fifty-one cents of Confederate States notes. November.

34. On the first day of December, 1863, one dollar of lawful money was equal to thirteen dollars and fifty-one cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of December, 1863, when one dollar of lawful money was
46 equal to fourteen dollars of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of December, 1863, when one dollar of lawful money was equal to thirteen dollars and ninety cents of Confederate States notes. December.

35. On the first day of January, 1864, one dollar of lawful money was equal to thirteen dollars and ninety cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the 15th day of January, 1864, when one dollar of lawful money was equal to twelve dollars and ninety cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of January, 1864, when one dollar of lawful money was equal to twelve dollars and eighty-two cents of Confederate States notes. 1864.—January.

36. On the first day of February, 1864, one dollar of lawful money was equal to twelve dollars and seventy-four cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of February, 1864, when one dollar of lawful money was equal to thirteen dollars and twelve cents of Confederate States notes, and from day to day thereafter regularly increased in value until the twenty-ninth day of February, 1864, when one dollar of lawful money was equal to sixteen dollars and thirty-five cents of Confederate States notes. February.

March. 37. On the first day of March, 1864, one dollar of lawful money was equal to sixteen dollars and thirty-five cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the fifteenth day of March, 1864, when one dollar of lawful money was equal to eleven dollars and seventy-two cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of March, 1864, when one dollar of lawful money was equal to eleven dollars and fifty-one cents of Confederate States notes.

April. 38. On the first day of April, 1864, one dollar of lawful money was equal to eleven dollars and forty-four cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of April, 1864, when one dollar of lawful money was equal to twelve dollars and thirteen cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirtieth day of April, 1864, when one dollar of lawful money was equal to eleven dollars and eleven cents of Confederate States notes.

May. 39. On the first day of May, 1864, one dollar of lawful money was equal to eleven dollars and thirty cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the fifteenth day of May, 1864, when one dollar of lawful money was equal to ten dollars and forty cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of May, 1864, when one dollar of lawful money was equal to nine dollars and forty-seven cents of Confederate States notes.

June. 48 40. On the first day of June, 1864, one dollar of lawful money was equal to nine dollars and forty-seven cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirtieth day of June, 1864, when one dollar of lawful money was equal to seven dollars and five cents of Confederate States notes.

July. 41. On the first day of July, 1864, one dollar of lawful money was equal to seven dollars and five cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of July, 1864, when one dollar of lawful money was equal to eight dollars of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of July, 1864, when one dollar of lawful money was equal to seven dollars and eighty-four cents of Confederate States notes.

August. 42. On the first day of August, 1864, one dollar of lawful money was equal to seven dollars and eighty-four cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of August, 1864, when one dollar of lawful money was equal to eight dollars and sixty-two cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of August, 1864, when one dollar

of lawful money was equal to eight dollars and fifty-four cents of Confederate States notes.

43. On the first day of September, 1864, one dollar of lawful money was equal to eight dollars and fifty-four cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of September, 1864, when one dollar of lawful money was equal to nine dollars and eighty-six cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth day of September, 1864, when one dollar of lawful money was equal to fourteen dollars and six cents of Confederate States notes. September.

44. On the first day of October, 1864, one dollar of lawful money was equal to fourteen dollars and six cents of Confederate States notes, and from day to day thereafter regularly decreased in value, until the fifteenth day of October, 1864, when one dollar of lawful money was equal to eleven dollars and sixty-two cents of Confederate States notes, and from day to day thereafter regularly decreased in value, until the thirty-first day of October, 1864, when one dollar of lawful money was equal to eleven dollars and sixty cents of Confederate States notes. October.

45. On the first day of November, 1864, one dollar of lawful money was equal to eleven dollars and six cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of November, 1864, when one dollar of lawful money was equal to eleven dollars and ninety-one cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirtieth day of November, 1864, when one dollar of lawful money was equal to thirteen dollars and ninety-one cents of Confederate States notes. November.

50 46. On the first day of December, 1864, one dollar of lawful money was equal to fourteen dollars and nine cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of December, 1864, when one dollar of lawful money was equal to fourteen dollars and eighty- nine cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of December, 1864, when one dollar of lawful money was equal to twenty-two dollars and twenty-two cents of Confederate States notes. December.

47. On the first day of January, 1865, one dollar of lawful money was equal to twenty-six dollars of Confederate States notes, and from day to day thereafter regularly increased in value, until the fifteenth day of January, 1865, when one dollar of lawful money was equal to twenty-nine dollars of Confederate States notes, and from day to day thereafter regularly decreased in value until the thirty-first day of January, 1865, when one dollar of lawful money was equal to twenty-four dollars and thirty-nine cents of Confederate States notes. 1865.—January.

48. On the first day of February, 1865, one dollar of lawful money was equal to twenty-four dollars and fifty-one February.

cents of Confederate States notes, and from day to day thereafter regularly decreased in value until the fifteenth day of February, 1865, when one dollar of lawful money was equal to twenty-two and eighty-six cents of Confederate States notes, and from day to day thereafter regularly increased in value until the twenty-eighth day of February, 1865, when one dollar of lawful money was equal to
51 twenty-seven dollars and twenty-two cents of Confederate States notes.

March. 49. On the first day of March, 1865, one dollar of lawful money was equal to twenty-seven dollars and fifty cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of March, 1865, when one dollar of lawful money was equal to thirty-two dollars and twenty cents of Confederate States notes, and from day to day thereafter regularly increased in value until the thirty-first day of March, 1865, when one dollar of lawful money was equal to forty-six dollars and thirty-five cents of Confederate States notes.

April. 50. On the first day of April, 1865, one dollar of lawful money was equal to forty-six dollars and thirty-five cents of Confederate States notes, and from day to day thereafter regularly increased in value until the fifteenth day of April, 1865, when one dollar of lawful money was equal to fifty-four dollars and seventy-nine cents of Confederate States notes, and from day to day thereafter regularly increased in value until the twentieth day of April, 1865, when one dollar of lawful money was equal to sixty-eight dollars and forty-nine cents of Confederate States notes, and from day to day thereafter regularly increased in value until the twenty-sixth day of April, 1865, when one dollar of lawful money was equal to one hundred and thirty-two dollars and forty-five cents of Confederate States notes, and from day to day thereafter regularly increased in value until the first day
May. of May, 1865, when one dollar of lawful money was equal to eight hundred and thirty-three dollars and thirty-three cents of Confederate States notes.

SEC. 3. In ascertaining the value of contracts under this act, no division of time less than one day will be noticed.

52 SEC. 4. All laws or parts of laws inconsistent with, or supplied by this act are hereby repealed.

Approved March 26, 1869.

And on the last-mentioned day, to wit, June 21st, 1871, the said plaintiffs, by their said solicitor, H. W. Guion, makes replication to the answers aforesaid, as follows:

53 In the circuit court of equity of the United States for the district of North Carolina. In equity.

BETWEEN "THE CAROLINA NATIONAL BANK of Columbia, South Carolina," Lysander D. Childs, & C. H. Manson, plaintiffs,
and
"THE ATLANTIC, TENNESSEE & OHIO RAILroad Company in North Carolina," "The Charlotte & South Carolina Railroad Company," Joseph H. Wilson, and Anderson Mitchell, defendants.

Filed as of 1st Monday in June, 1871.

The replication of the said complainants to the answers of the said defendants.

These repliants, saving & reserving to themselves all & all manner of advantage of exception which may be had & taken to the manifold errors, uncertainties, & insufficiencies of the answers of the said defendants, for replication thereunto say that they do & will aver, maintain, & prove their said bill to be true, certain, & sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants is very uncertain, evasive, & insufficient in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answers contained, material or effectual, in the law to be replied unto, & not herein & hereby well & sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, & prove as this honorable court shall direct, and humbly pray as in & by their said bill they have already prayed.

H. W. GUION, *Sol.*

54 And afterwards, to wit, on the 14th day of August, 1871, leave is granted to take depositions, and commissions issued accordingly.

And on the 11th day of October, 1871, the plaintiffs, by their said solicitor, file as evidence in the cause the following depositions:

55 UNITED STATES OF AMERICA,
North Carolina District:

Circuit court, fourth district.

The President of the United States of America to Frederick Nash, esquire, of Charlotte, N. C., greeting:

We, reposing especial trust and confidence in your integrity, do authorize and empower you to cause S. B. Alexander, John H. McAden, M. L. Wriston, F. H. Dewey, F. W. Dewey, and Tho's H. Brem to appear before you at such time and place as you may appoint, and, on oath, to examine touching all such matters and things as they shall know of and concerning a certain matter of controversy pending in our circuit court of the United States for the district of North Carolina, wherein the Carolina National Bank of Columbia, South Carolina, L. D. Childs, & C. H. Manson are plaintiffs, and The Atlantic, Tennessee & Ohio R. R. Company, in North Carolina, The Charlotte & South Car-

olina R. R. Company, Jos. H. Wilson et al., are defendants, and their depositions in writing, by you so taken, the same to transmit, sealed with your seal, to the judges of our said circuit court of the United States, to be held for the district of North Carolina, at Raleigh, on the last Monday in November next, to be read in evidence in behalf of the plaintiffs in said controversy.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the first Monday in June, 1871, and in the *ninety-* 95th year of the Independence of the United States.

[L. S. OF THE COURT.] N. J. RIDDICK, *Clerk.*

56 By virtue of the commission herewith annexed, to me directed from the circuit court, fourth circuit, of the United States of America, North Carolina district, I have taken the depositions of the witnesses therein named and hereto subjoined, at my office in the city of Charlotte, N. C., on this 4th day of October, A. D. 1871, to be read in evidence in behalf of the plaintiffs in a controversy pending in said court, wherein The Carolina National Bank of Columbia, South Carolina, L. D. Childs, and C. H. Manson are plaintiffs, and the Atlantic, Tennessee and Ohio Railroad Company in North Carolina, the Charlotte and South Carolina Railroad Company, Joseph H. Wilson, and others are defendants; both parties, by their counsel, being present, and consenting thereto.

F. H. DEWEY, being duly sworn, deposes and say' as follows:

Question. Are you acquainted with the parties to this suit?

Answer. I am.

Question. Did you make demand of any bond of the Atlantic, Tennessee and Ohio Railroad Company? If so, when, of whom, and what bond?

57 Answer. I did, on 25th October, 1870, make demand of William Johnston for payment of interest then due on the original bonds and coupons of the Atlantic, Tennessee and Ohio Railroad Company, contained in the following list, the numbers as follows: Numbers 201, 202, 203, 204, 205, 206, 207, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230; fourteen coupons, past due, on bonds numbers 208, 218, 217, 216, 215, 214, 213, 212, 211, 210, 209, 207, 206, 205, 204, 203, 202. On bond number 201, above stated, there was no coupon then due in my hand, but in place thereof there was the fourteen coupons detached from bond number 208.

Question. Who was W'm Johnston, and why did you demand the payment from him?

Answer. William Johnston was president of the Atlantic, Tennesse' and Ohio Railroad Company at that time, and there was no office of that railroad in Charlotte, nor in Statesville.

Question. At whose instance did you make the demand, and in what character or capacity did you make demand?

Answer. At the request of H. W. Guion, attorney for the plaintiffs, and in the capacity of notary public.

Question. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at

58 issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I only know that when I made demand of William Johnston for payment of the interest on the bonds, that he said they would not be paid.

And further this deponent saith not.

F. H. DEWEY.

Sworn to and subscribed before me this 4th day of October, 1871.

F. NASH, *Commissioner.*

59 S. B. ALEXANDER, being duly sworn, deposes and says:

Question. Are you acquainted with the parties in this suit?

Answer. I am.

Question. Did you ever hold or own any of the coupon-bonds of the Atlantic, Tennessee & Ohio Railroad Company? If yea, from whom did you get them, and what was said in relation to their value?

Answer. I have received thirteen of the bonds from Col. W'm Johnston, who was then the president of the company. I took them in a settlement with him as my guardian; and he assured me at the time that they were endorsed by the Charlotte and South Carolina Railroad Company; that they were worth more than their face in good money, and that he would put nothing of a confederate value upon me; that the bonds were so good that he would not let me have them without I would also take five thousand dollars of the stock of the Atlantic, Tennessee and Ohio Railroad; that, relying upon such statement, I did take the bonds and the stock, in said settlement, at their par value. This occurred about the 16th of March, 1863.

Cross-examined by defendants' counsel:

Question. At the time that this transaction took place were not the circulating medium of the country, stock of all kinds—bank, rail-
60 road, State stocks or bonds, and all choses in action regarded as of very uncertain value?

Answer. I had just returned from the army, into which I went from college, and had no knowledge of such matters.

S. B. ALEXANDER.

Sworn to & subscribed before me this 5th October, 1871.

F. NASH,
Commissioner.

It is admitted by the defendants that bond number 90 is the property of the Carolina National Bank, one of the plaintiffs, and purchased from John H. McAden.

M. L. WRISTON, being duly sworn, deposes and says:

Question. Are you acquainted with the parties to this suit?

Answer. I am.

Question. Look upon the bonds and coupons here produced by F. H. Dewey and spoken of by him, and state whether or not you signed the same as treasurer, and all you know in relation to them.

Answer. Those bonds were signed by me as treasurer, and by Mr. Johnston, as president, on or about the 1st of May, 1862; and to the best of my recollection, twenty-five thousand dollars of the same were made payable on the first day of November, 1869, and twenty-five thousand dollars likewise falling due on the first of November,

61 in each of the years 1870, 1871, 1872, 1873, and 1874, and one thousand more made payable on the first of November, 1875, making a total issue of one hundred and fifty-one thousand dollars. I was treasurer of the company from its organization until January, 1863, or thereabouts, and was succeeded in the office by Mr. James Daniel, who was succeeded by Mr. Bouknight, who was in turn succeeded by Mr. C. H. Manson, who was succeeded by Mr. C. A. Carlton; and, finally, I succeeded Mr. Carlton. There was but one issue of bonds that I ever knew or heard of.

Question. As treasurer of the company, do you know whether any of those bonds or coupons have been paid off or redeemed by the company?

Answer. The books show that one hundred and eighteen thousand and five hundred dollars of the company's bonds have been redeemed up to the 31st of December, 1869, leaving, at that date, outstanding unpaid, thirty-two thousand and five hundred dollars, since which time about five thousand dollars more have been paid.

Question. From whom were they redeemed, and what was given for them? Were they redeemed at par?

Answer. The reports show that fifty-two thousand and five hundred dollars have been redeemed from the Charlotte and South Carolina Railroad Company, sixty-two thousand dollars from the Char-
62 lotte, Columbia and Augusta Railroad Company, one thousand dollars by purchase by the company, and three thousand dollars had been redeemed by the company previous to this report. These statements are taken from a printed report of a meeting of the stockholders of the Atlantic, Tennessee and Ohio Railroad Company, held in the city of Charlotte, on the 19th of January, 1870, as published in the "Charlotte Observer," of date Jan'y 21st, 1870.

The witness preferring to examine the books before testifying further, the commission is adjourned until to-morrow morning at ten o'clock.

OCTOBER 5TH, 10 *o'clock.*—The commission met pursuant to adjournment, when M. L. Wriston proceeded to testify as follows:

In the statement made yesterday that five thousand dollars had been paid since 31st of December, 1869, upon examination of the books of the company, I find that I made a mistake. The amount should be four thousand and five hundred dollars. The books show the following bonds to have been redeemed: Bonds No. 80 and 81, for five hundred dollars each, were redeemed for six hundred and fifty dollars; bonds
63 No. 85 and 86, and others, as may be seen as per schedule herewith filed, marked A, and certified by the commissioner. The Charlotte and South Carolina Railroad Company became indebted to the Atlantic, Tennessee and Ohio Railroad Company, at various times, beginning June, 1866, and ending April, 1869, in the sum of four hundred thousand nine hundred and forty dollars and seventy-eight cents, and had credits, during the same time, to the amount of one hundred and twenty-one thousand two hundred and fifty-five dollars and ninty-nine cents, leaving a balance due, at that date, of two hundred and seventy-nine thousand six hundred and eighty-four dollars and seventy-nine cents, which amount was transferred to the Charlotte, Columbia and Augusta Railroad acc't.

Question. Does the published meetings of the stockholders of the Atlantic, Tennessee and Ohio Railroad Company, held in Charlotte, Wednesday, January 19th, 1870, which appears in the "Charlotte

Observer" newspaper, herewith filed, of date of January 21st, 1870, contain a substantial report of the proceedings of that meeting, as appears from the books of that company?

(This question is objected to by defendants' attorney.)

Answer. A similar report of the meeting is posted in the minute-book of the company.

Question. Does the pamphlet herewith presented and filed, marked "B," contain the proceedings of a meeting of the stockholders of said company, held on the 20th day of July, 1870; and was the same
64 published and issued by the officers of the company?

(This question objected to by defendants' attorney.)

Answer. I do not know; I was not at the meeting.

Question. Look on bond number 90, and state if it is one of the bonds issued by the company.

Answer. It is.

Question. Look upon these coupons now presented, and state if they are genuine, and describe them.

Answer. Coupon number 17, of bond No. 90, for $15, due 1st May, 1870; coupons No. 17 & 18, of bond number 253, due 1st May, 1870, and 1st November, 1870; coupons No. 18, bond No. 254, due 1st November, 1870; coupon No. 17, of bond No. 254, due 1st May, 1870; coupons Nos. 17 and 18, of bond 255, due 1st of May, 1870, and 1st November, 1870; coupons Nos. 17 and 18 of bond 256, due 1st May, 1870, and November, 1870; coupons Nos. 17 and 18, of bond No. 257, due 1st May, 1870, and 1st November, 1870; coupons Nos. 17 and 18, of bond 260, due 1st of May, 1870, and 1st November, 1870; coupons No. 18, of bond No. 261, due 1st November, 1870; coupons Nos. 17 and 18, of bond No. 262, due 1st May, 1870, and 1st November, 1870; coupon No. 17, of bond No. 263, due 1st May, 1870; coupons Nos. 17 and 18, of bond No. 264, due 1st of May and 1st November, 1870.

Cross-examined by defendants' counsel:

Question. Have you examined the bonds and the coupons set forth in the bill in this case, and referred to in the deposition of Mr. F. H. Dewey? And, if so, state if those evidences of indebtedness are entered upon the books of the company, now in your possession,
65 as having been redeemed by the defendant; and, if so, state who was the treasurer and secretary of the company at that time, and in whose handwriting the entries in the books of the company were made; and also the dates of such entries.

Answer. I have examined them, and the bonds have been entered upon the books of the company as having been redeemed by the company in May, 1869. See statement marked "A." C. H. Manson was secretary and treasurer at the time, and I believe the entries to be in his handwriting, he being one of the plaintiffs in this action. The books show that in May, 1869, eighty-seven bonds of five hundred dollars each were redeemed, including all the bonds in controversy except number 90, and also show *that* at the same time coupons amounting to fifteen thousand one hundred and twenty dollars to have been redeemed.

Re-examined by plaintiffs' counsel:

Question. Were these bonds and coupons referred to in your cross-examination redeemed at par, or was any deduction made on account of depreciated value?

Answer. The books show that the bonds were redeemed at par, and the coupons are included in the fifteen thousand one hundred and twenty dollars heretofore mentioned.

Question. Do you know, or can you set forth, any other matter or thing

which may be a benefit or advantage to the parties at issue or
66 either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. Not of my own knowledge. In May, 1870, I find the following entries upon the books of the company, in the handwriting of C. H. Manson, one of the plaintiffs, who was secretary & treasurer of the company at the time.

"*Sundries, to sundries.*

For sundries received from estate of R. M. Johnston, dec'd, and others,	
Viz: bonds of C. C. & A. R. R.	$33,000 00
Accrued int. on same to May 1st, 1870, nett	731 50
& cash	1,768 50
	35,500 00
In exchange for the following bonds & coupons of this Co., viz:	
Bonds,	$25,000 00
Coupons past due	10,500 00
	35,500 00

Bonds receivable, Dr.

32 bonds C. C. & A. R. R., Nos. 17 @ 21, 41 @ 43, 151 @ 156, 182 @ 197, 499, 500, ea. 1,000	$32,000
2 bonds C. C. & A. R. R., Nos. 1806, 1812, ea. $500	1,000
Interest acc't, accrued interest on C. C. & A. bonds, nett	731 50

Cash, Dr.

Rec'd this amount	$1,768 50

Bonds payable, Cr.

50 bonds A. T. & O. R. R., Nos. 201 @ 250, ea. 500, bearing interest as per coupons from May 1st, 1863,	$25,000

67 *Coupons, Cr.*

Coupons attached to bonds, &c., this Co., as above, to May 1st, 1870, 7 years	$10,500

M. L. WRISTON.

Sworn to and subscribed before me this 9th day of October, A. D. 1871.

F. NASH, *Commissioner.*

68 *Statement referred to in the deposition of M. L. Wriston, as published in the Charlotte Observer, of date Jan'y 21st, 1870.*

This paper to be attached to the deposition of M. L. Wriston.

F. NASH, *Commissioner.*

Meeting of the stockholders of the A. T. & Ohio Railroad Company, held in Charlotte, Wednesday, January 19th, 1870.

On motion of Capt. S. B. Alexander, the convention was organized by calling R. F. Simonton, esq., to the chair, and appointing C. I. Summers and E. B. Drake, secretaries. S. B. Alexander, C. A. Carlton, and J. L. Brown, esq'r's, were appointed a committee to verify proxies.

Resolved, (on motion of Mr. Myers,) That stockholders owning stock, not transferred upon the books of said company, shall be entitled to vote thereon as fully as if said stock stood in his or their name, and that the committee on proxies be authorized to receive said votes and certify the same to this convention.

On motion of President Johnston, the meeting adjourned for one hour.

69 Convention re-assembled, and the committee on proxies made their report, which showed that a majority of the stock was represented, 1,360 shares by proxy and 1,364 in person.

Objection was made to Col. Johnston being allowed to vote the stock owned by the C. & S. C. Railroad Company, in the absence of authority from the board of directors of that company, which elicited addresses from Gen. Young, Gen. Barringer, and Col. Johnston, defending his right to do so; when objection was withdrawn.

On motion of Gen. Barringer, the temporary organization was made permanent.

Col. Johnston, president of the company, presented the following report, which was read and adopted:

Balance-sheet of the A. T. & O. R. R. Co., December 31, 1869.

Cost of road	$399,000		
Less estimated depreciation	$199,000		
		$200,000	
Bonds of the city of Charlotte		20,000	
Due from C. C. & A. R. R., including in't to date		200,801	22
Due from other roads		4,500	
Property, wagon and 2 mules, cost		462	50
		$425,763	72

70 LIABILITIES.

Capital stock:			
Am't paid up	$173,231	43	
" " " by town of Charlotte in its bonds.	20,000		
		$193,231	43
Bonds of this company:			
Am't of original issue	$151,000		
Redeemed to date	118,500		
Leaving balance outstanding		32,500	

Interest on bonds of this Co.:		
Am't accrued interest	$68,250	
Less am't coupons redeemed	$47,549	
Leaving balance due		20,701
Due to W. C. & R. R. and others, estimated		25,000
Excess of assets		154,331 29
		$425,763 72

C. H. MANSON, *Tre's.*

The treasurer's report was then presented to the convention, read, and adopted.

C. A. Manson, tre's., in account with the A. T. & O. R. R. Co., for year ending Dec. 31, 1869.

By maintenance of way:		
Paid for repairs of bridges, &c		$204 90
71 Bonds payable:		
Co.'s bonds redeemed by C. & S. C. R.	$52,500	
Co.'s bonds redeemed by C. C. & A. R	62,000	
Co.'s bonds redeemed by purchase	1,000	
		115,500
C. & S. C. R. R. Co.:		
For cash	$116 39	
" am't interest on that account	15,260 39	
		15,376 78
C. C. & A. R. R. Co.:		
For cash	$3,492 76	
" interest on that account	8,721 21	
		$12,219 97
W. C. & R. R. R. bonds:		
For $2,305.46, bonds of that Co		1,752 15
By interest account:		
For disc't on bonds of this Co	1,400	
For interest on coupons of this Co	66 15	
		1,466 15
By interest coupons:		
Redeemed coupons of this company		$414 15
By property account:		
Paid for wagon, 2 mules, and harness		$462 50
72 By engineering:		
Expended by engineer corps		$4,330 16
By salary account:		
Paid salaries of officers, $1868-9		$3,750 00
By taxes account:		
Paid taxes on N. C		$306 48

By expense account:

Paid sundry small items		$203 50
		$197,181 59

C. H. MANSON, *Tre's.*

To C. & S. C. R. R. Co.:

For cash	8,140 80	
For bonds A., T. & O. R. R	52,500 00	
For coupons A., T. & O. R. R	17,595 00	
		$78,235 80

To C. C. & A. R. R. Co.:

For cash	4,566 39	
For bonds A., T. & O. R. R	62,000 00	
For coupons and discount	24,731 15	
		91,097 54

73 To N. C. R. R. Co.:

For cash received acc't		116 39

To W. C. & R. R. bonds:

For cash received for $2,305.46, cost	1,752 15	
profit	1,740 61	
		3,492 76

To interest account:

For profit on purchase of bonds and coupons of this Co	257 50	
For interest charged to C. & S. C. R. R	15,260 39	
For interest charged to C. C. & A. R. R	8,721 21	
		$24,239 10
		$197,181 59

On motion of Gen. Barringer, Capt. Bardwell, Messrs. A. Carson, and A. M. Bogle, of Alexander County, were invited to seats in the convention.

President Johnston took the floor and addressed the convention at considerable length, in explanation of his administration of the finances and affairs of the company, and assigned reasons why the rebuilding of the road had been delayed, which appeared to afford very general satisfaction. He stated that he was anxious and willing to begin to rebuild at any time when the funds of the company would justify the undertaking, and that he would render any assistance in his power to accomplish the object; that he had at all times watched and protected the interests of the company, as shown by the exhibit of its
74 assets; and that no outside influence would be allowed to change his policy in future.

The convention was addressed by Gen. Young and Gen. Barringer at considerable length in favor of Col. Johnston's administration.

After considerable discussion and difference in opinion, the following resolutions, offered by A. B. Springs, esq., were unanimously adopted:

Whereas we regard the reconstruction of the Atlantic, Tenn., & Ohio

R. R. as a matter of the utmost importance to Western N. C.; and whereas the credit of the State is so depressed at this time as to render the sale and appropriation of bonds loaned by the State for its reconstruction and extension impolitic and unwise: Therefore

Resolved, By the stockholders, in convention assembled, that the bonds of the State issued to this company be returned to the treasurer of the State.

Resolved, That as the means and assets of the company, after paying its present debts and liabilities, are insufficient to rebuild the road or even one-fourth thereof to Statesville, that the corporations and citizens of Charlotte and Statesville, and all citizens of Mecklenburg and Iredell counties, and all others, are hereby earnestly appealed to to come forward and subscribe to the capital stock of the company; and that whenever the sum of two hundred thousand additional stock be subscribed, the president and directors are hereby instructed to put under contract the entire line to Statesville, and build the road as early as practicable.

75 *Resolved*, That if said sum of $200,000 be not subscribed by the 1st day of November next, that all the debts due by the company and its treasury be divided pro rata among the stockholders, according to their respective rights, and that the bonds of the State belonging to the company be deposited with the National Park Bank, of the city of New York, until such time as their return to the treasurer of the State is deemed proper by the board of directors.

On motion of Col. Johnston,

Resolved, That the by-laws which govern the C. & S. C. Railroad Company, be adopted by the A., T. & O. R. R. Company.

On motion the convention adjourned.

R. F. SIMONTON,
Chairman.

C. S. SUMMERS,
E. B. DRAKE, *Secretaries.*

Statement "A" referred to in the deposition of M. L. Wriston.

76 No. of bond.	No. of coupon.	When redeemed.	From whom redeemed.	When due.	Par value.	Am't paid.	Profit.
80, 81	30	Feb'y 1871	By purchase	Nov'r 1870	1,000	650	350
85, 86	26	Ap'l 9, "	"	" "	1,000	650	350
95	8	June 3, "	"	" "	500	264	236
98	8	" " "	"	" "	500	275	225
127	8	Jan'y 9, 1869	"	" 1871	500	375	125
3	13	May, "	C. & S. C. R. R.	" 1869	500	500	
15, 16	28	" "	"	" "	1,000	1,000	
17, 18	28	" "	"	" "	1,000	1,000	
19, 20	28	" "	"	" "	1,000	1,000	
21, 22	28	" "	"	" "	1,000	1,000	
23, 24	28	" "	"	" "	1,000	1,000	
46	9	" "	"	" "	500	500	
60, 61	28	" "	"	" 1870	1,000	1,000	
62, 63	28	" "	"	" "	1,000	1,000	
64, 65	28	" "	"	" "	1,000	1,000	
66, 67	28	" "	"	" "	1,000	1,000	
68, 69	28	" "	"	" "	1,000	1,000	
99, 100	16	" "	"	" "	1,000	1,000	
82	14	" "	"	" "	500	500	
111 to 120	170	" "	"	" 1871	5,000	5,000	
201-250		" "	[Bonds in suit.]	" 1873	25,000	25,000	
252	21	" "	"	" 1874	500	500	
302	15	" "	"	" 1875	500	500	
41-45	24	June 15, "	"	" 1869	1,000	1,000	
49, 50	24	" " "	"	" "	1,000	1,000	
13, 14	20	" " "	"	" "	1,000	1,000	
94	8	" " "	"	" 1870	500	500	
124	11	" " "	"	" 1871	500	500	
77 128, 129	28	June 15, 1869	C. & S. C. R. R.	Nov., 1871	1,000	1,000	
258, 259	26	" " "	"	" 1874	1,000	1,000	
38, 39	20	Jan'y 5, "	"	" 1869	1,000	1,000	
40-43	20	" " "	"	" "	1,000	1,000	
44	10	" " "	"	" "	500	500	
42	10	" 16, "	"	"	500	500	
101 to 110	40	Nov. 16, 1869	C. C. & A. R. R.	Nov., 1871	5,000	5,000	
130, 131	28	" 27, "	"	"	1,000	1,000	
251	22	" " "	"	" 1874	500	500	
87-89, 92, 93	75	" " "	"	" 1870	2,500	2,500	
151 to 200	850	" " "	"	" 1872	25,000	25,000	
265 to 294	630	" " "	"	" 1874	15,000	15,000	
70-79	150	" " "	"	" 1870	5,000	5,000	
48	7	" 1st, "	"	" 1869	500	450	50
1 & 2	22	Dec. "	"	" "	1,000	1,000	
25 to 35	154	" " "	"	" "	5,500	5,500	
37 & 47	22	" " "	"	" "	1,000	1,000	
91	12	" " "	"	" 1870	500	450	50
					$62,500	$62,400	$100
301	11	May 10th, 1871	A., T. & O. R. R.	" 1875	500	265	235
123-125, 126	21	Jan'y " "	"	" 1871	1,500	1,500	
96, 97	16	Feb'y " "	C. C. & A. R. R.	" 1870	1,000	1,000	
132	14	" " "	"	" 1871	500	500	
83 & 84		Jan'y " "	A., T. & O. R. R.	" 1870	1,000	1,000	
					$4,500	$4,265	$235

78 *Exhibit "B" referred to in the deposition of M. L. Wriston.*

I have no doubt this is the report of the stockholders of the A., T. & O. R. R. Co., as it purports to be.

JOHN A. YOUNG.

Proceedings of the stockholders of the Atlantic, Tennessee & Ohio Railroad Company, held in the city of Charlotte, N. C., July 20th, 1870. Charlotte, N. C. Smith, Watson & Co., printers, Observer office, 1870.

PROCEEDINGS.

Pursuant to official notice given, the stockholders' meeting *in* the Atlantic, Tennessee & Ohio Railroad Company convened in the court-house in Charlotte, N. C., on Wednesday, the 20th of July, 1870. At 11 o'clock a. m., on motion of President Johnston, the meeting was organized by calling John Young, esq., of Iredell, to the chair, and appointing E. B. Drake and Francis Justice secretaries.

79 On motion of Gen. John A. Young, R. F. Simonton, W. S. M. Davidson, and C. H. Manson were appointed a committee to verify proxies.

Mr Simonton moved that the bona-fide owners of stock be allowed to represent their stock in the meeting, though the same is not transferred on the company's books.

The committee to verify proxies reported as follows:

Total stock in the company	3,465	shares.
Majority stock in the company	1,733	"
No. shares represented in person	1,338	"
" " " by proxy	813	"
Total	2,151	"

Said 2,151 shares being a majority of stock, the meeting was declared duly organized.

Gen. Rufus Barringer moved that reports be now received. Carried.

President Johnston stated that he had no report to submit, the necessity of a report from him being superseded by the report of a committee.

Gen. Young, from a committee raised by the following resolution, viz:

"Resolved, That a committee of five be appointed, whose duty it shall be to examine into the manner in which the assets of the Atlantic, Tennessee & Ohio Railroad Company have been managed and disposed of since the meeting of the stockholders in 1866, and that they report the result of their enquiries to the next meeting of the stockholders, setting forth and showing the entire available means of the company,"

80 submitted the following report:

CHARLOTTE, N. C., *July* 20, 1870.

To the stockholders of the Atlantic, Tennessee & Ohio Railroad Company:

In pursuance to the following resolution, passed by the directors of your company at their meeting on the 31st of May last, viz:

Resolved, That a committee of five be appointed, whose duty it shall be to examine into the manner in which the assets of the A., T. & O. R. R. Co. have been managed and disposed of since the meeting of the stockholders in 1866, and that they report the result of their enquiries to the next meeting of the stockholders, setting forth and showing the entire available means of the company,

Your committee, in discharge of their duty, beg leave to submit the following report, viz:

The road commenced in the year 1859, and completed to Statesville in March, 1863. The available capital stock of the company at the commencement of the work was $82,000, which amount was increased to the sum of $173,500 as the construction of the road progressed, exclu-

sive of the subscription of the city of Charlotte. This, together with $151,000 of bonds, bearing six per centum interest, endorsed by the Charlotte & South Carolina Railroad Company, constituted the entire available means of your company.

81 The first division of the road was completed to Statesville, a distance of 46½ miles, at a cost of less than $400,000, having contracted a floating debt of less than $100,000, which debt has been paid since the close of the war from the assets of the company. In thirteen months after the road was finished, viz, in April, 1864, six miles of the track were taken up by the confederate authorities, and in the fall of the same year the balance of the rails were removed and distributed among other railroads deemed of greater military importance than yours. Thus was the entire road dismantled by military power, and against the protests of the officers of the same.

The road remains in this dismantled condition, the rights of the company having been protected by the active exertions of its officers. The road-bed, bridges, &c., being all that was left, the debt of over $220,000, bearing interest, hung over your inactive property. This bond and floating debt had thus accumulated to near $300,000. In the year 1865, after the surrender, your president, eagerly looking to your interest, set himself to work to marshal its assets, and succeeded in a manner which demands the admiration of your committee. The result of his efforts was the collection of $364,653.50 from the various companies who had received your rails, under the action of the confederate government, leaving yet a balance of over $4,000 due your company.

This fund, and other collections from minor sources, were placed at interest until the profit of your company, from interest alone,

82 amounts $68,072.93. Of this sum $53,106.60 was allowed by the Charlotte & S. C. R. R. Company, and $14,966.33 was received from other sources. From the published statements of the treasurer, hereto annexed, and which are made a part of this report, it appears that the president has collected of the company's assets the sum of $439,803.72, including proceeds of rails, interest, &c., from 1865, and disbursed, in the payment of debts, salaries, &c., the sum of $200,706.31, leaving in the hands of the company $239,097.41 of the assets, still good. This amount is subject to the debts of the company, still due, as stated in the said report of the treasurer, amounting to $114,906, leaving a balance in the treasury of the company of about $125,000, after paying all its liabilities. It is proper to state that of the above debt of $114,906 there is $57,500 of bonds not due for two or three years, which sum, added to the $125,000 in the hands of your treasurer, affords the sum of $182,500, which may be used in the reconstruction of your road.

Your committee find that on the 28th of April, 1868, the board of directors of your road approved of the action of the president in loaning the funds of the company, and authorized him to continue to make that disposition of them as they should be collected. They also find that up to November 30th, 1868, interest was charged on the loans of the C. & S. C. R. R. at the rate of nine per centum per annum; and from that date to the 30th of June, 1870, the rate of interest was eight per centum per annum.

83 Your committee also find that $93,500 of the company's bonds, and $34,845 of its coupons have been redeemed, and that of the bonds redeemed, $4,000 were by purchase, and $89,500 by exchange for a similar amount of bonds of the C. & S. C. R. R. Co., and that of the coupons redeemed $4,260 were by purchase, and $30,585 by exchange

for bonds of the C. & S. C. R. R., at par. The amount saved to the company by the purchase of its bonds and coupons is $3,835.69.

It is proper to state that the reports of the condition of your company herewith published show the condition of the company from November 30th, 1865, when its first receipts were had, in Federal currency; and that the item for salaries, embraces the period from April, 1864, to June 30th, 1870. The amount paid for officers' salaries shows that the finances and general business of your company, which have required extraordinary exertions and heavy responsibilities, cost less than one per cent. Your committee feel it due to your president to state that the management of your interests during these years of extraordinary difficulty, exhibits an appreciation of the responsibility of the trust confided to him, a devotion to your interest, and an exercise of sound judgment which entitles him to the confidence and gratitude of his stockholders.

No higher evidence of this is necessary than that they should be able to show assets amounting to $125,000 in cash, and a road-bed costing $200,000 in gold, over and above the legitimate liabilities of your
84 company, and this, too, made out of an available subscription of only $82,000 when the road was commenced.

The foregoing statements do not embrace the loan made of bonds of the State of North Carolina to this company. From the statements made by your president and R. Y. McAden, to the committee of the last legislature, it appears that in order to get these bonds, thus appropriated, Mr. McAden paid one hundred and sixty-three bonds, of $1,000 each, on the 14th of September last, by which a suit brought, and an injunction obtained by one Kehoe, was compromised. The 163 bonds thus paid, as appears from the said statement of Mr. R. Y. McAden, was to Gen. Littlefield, out of the 1,760 bonds appropriated by the State. Of the 163 bonds so expended it appears that sixteen of them have been voluntarily returned by the parties receiving them, which, together with the 1,597, have been returned by your president to the treasurer of the State, according to the requirements of the acts of the legislature. Thus your committee is informed by your president that all the bonds that ever came into his hands have been returned to the State, and your company's bonds, deposited with the State treasurer, remain with that officer, subject to the order of your president. There *is* still due the State one hundred and forty-seven of these bonds. These bonds are quoted in New York as selling at 25 c'ts on the dollar, with 3 per cent. interest due; this would make the 147 bonds worth about 32,340 at their present market value.

85 Your committee take pleasure in saying that, in the prosecution of their investigation, every facility was afforded them by your president and treasurer, who were personally present with the books of the company. Their investigations enable them to testify to the accuracy in which the accounts of the company have been kept under the present administration, as well as to assure the stockholders that their property has been closely looked after, their interests diligently prosecuted and guarded, and a faithful account rendered of everything due them, either of savings of their scattered property, or from the accumulated interest upon your funds.

All of which is respectfully submitted.

JOHN A. YOUNG,
E. B. DRAKE,
R. F. SIMONTON,
THO'S H. BREM,
Committee.

86 *A., T. & O. R. R. Co. Statement of receipts and expenditures from November 30, 1865, to June 30, 1870, inclusive.*

RECEIPTS.

From sales of railroad iron		$364,653 50
" " of bonds receivable		6,999 90
" interest on loans, &c	64,237 24	
" profit on purchase of bonds and coupons	3,835 69	
		68,072 93
" sales of engineer's property		70 00
" other sources		7 39
		$439,803 72

EXPENDITURES.

Paid old balance due for railroad iron	$47,705 07
Bonds of this company redeemed	93,500 00
Coupons " " " "	34,845 00
Bonds receivable, purchased	40,303 63
Paid for engineering	4,543 16
" " engineer's property	852 50
" salaries of officers from 1863 to date	10,833 33
" confederate claims	126 90
" for account maintainenance way	204 90
" taxes	482 62
" sundry expenses	309 10
N. C. R. R. Co., due from that Co	451 08
C. C. & A. R. R., " " "	205,646 43
	$439,803 72

C. H. MANSON, *Treasurer.*

87 *Atlantic, Tennessee & Ohio Railroad Company. Balance sheet, June 30, 1870.*

ASSETS.

Cost of raod	$399,693 60	
Less depreciation	199,693 60	
		$200,000 00
Bonds receivable:		
Bonds of city of Charlotte	20,000 00	
" C. C. & A. R. R.	33,000 00	
" W. C. & R. R. R.	303 73	
		53,303 73
Property		462 50
Due from C. C. & A. R. R.		205,646 43
" " other R. R. companies		4,951 08
Total		$464,363 74

LIABILITIES.

Capital stock:		
Amount paid up in cash	$173,231 43	
" " by town of Charlotte in its bonds	20,000 00	
		$193,231 43
Bonds of this company:		
*Amount outstanding, including accrued interest on same to date		89,906 00
Due to the W. C. & R. R. R., and others, amount estimated		25,000 00
Excess of good assets over and above liabilities		156,226 31
Total		$464,363 74

C. H. MANSON, *Treasurer.*

* (In pencil:) Bonds 57,500
Interest 32,406

$89,906

88 Dr. E. Nye Hutchinson moved that the thanks of the stockholders be tendered the committee, and that the report submitted by Gen. Young be adopted. Carried. Gen. Barringer moved that R. M. Oates, esq., one of the commissioners of Mecklenburg County, and Col. Thomas A. Allison, one of the commissioners of Iredell County, be requested to occupy seats in the meeting in their official character, to represent the interest of their respective counties in the general discussions of the meeting. Carried.

President Johnston submitted the following paper, which was read:

STATE OF NORTH CAROLINA,
Mecklenburg County:

At a meeting of the board of commissioners, held at the court-house in Charlotte, on the 16th day of April, 1870, the following proceedings were then and there had, to wit:

Ordered, by the board of county commissioners, a majority of the commissioners being present and voting in the affirmative, That the county commissioners subscribe ($200,000) two hundred thousand dollars to the capital stock of the Air-Line Railroad Company, intended to run from Atlanta, Georgia, to Charlotte, North Carolina, and ($100,000) one hundred thousand dollars to the capital stock of the Atlantic, Tennessee & Ohio Railroad Company in North Carolina. This subscription to be paid in bonds of the county of Mecklenburg, bearing (7) seven per cent. per annum, interest payable semi-annually, the
89 bonds to be taken at par, and the principal of the bonds payable twenty years after date.

Ordered, That an election be held in the various townships in said county on Thursday, the 19th day of May, 1870, at which time the qualified electors will be entitled to vote either for or against subscription. The electors in favor of the subscription will vote "For subscription," and the electors against subscription will vote "Against subscription."

It is further ordered, That the sheriff of the county make all necessary arrangements for said election, as provided under the laws and regulations for election of members of the legislature.

THOMAS L. VAIL,
R. M. OATES,
R. L. DEARMOND,
R. R. KING,
County Commissioners.

The question of subscription was submitted to the people of the county on the following conditions: That the subscription of two hundred thousand dollars to the Air-Line Railroad, and that of one hundred thousand dollars to the Atlantic, Tennessee & Ohio Railroad in North Carolina, now submitted to the voters of Mecklenburg County, to be decided by ballot on the 19th day of May, 1870, is submitted with the express understanding, on the part of said commissioners, that said subscription, if carried, is to be paid in four quarterly installments of fifty thousand dollars each, in Mecklenburg County bonds, to the Air-Line Railroad Company, and in four quarterly installments of
90 twenty-five thousand dollars each, in Mecklenburg County bonds, to the Atlantic, Tennessee & Ohio Railroad. The first installment to each company to be paid within sixty days after the work is fairly commenced by contractors, and the payment to be discontinued and this subscription to be annulled in the event the progress ceases. And provided further, that said subscriptions, or their proceeds, be expended in the county of Mecklenburg. And provided further, that the guage of the A., T. & O. Railroad shall conform to that of the North Carolina Railroad.

And whereas, at a meeting of the board of said commissioners, held at the court-house in Charlotte aforesaid, on the 20th day of May, 1870, for the purpose of comparing the vote on said question, it appearing from the returns then and there made that a large majority of the votes cast were "For subscription," it was then and there declared that said subscription was legally made.

It is therefore ordered by the board, That the chairman of this board notify A. S. Buford, president of the Air-Line Railroad Company, and William , president of the Atlantic, Tennessee & Ohio Railroad Company of said subscriptions, and request them to inform this board, at their earliest convenience, of their acceptance or non-acceptance of said subscription.

CHARLOTTE, N. C., *June 6th*, 1870.

Col. W'M JOHNSTON,
91 *President Atlantic, Tennessee & Ohio Railroad Company:*

SIR: In compliance with the instructions of the board of county commissioners, I transmit the foregoing to you for your consideration and action. It is very important that we should know at an early day whether you accept our subscription or not. In case you accept it, it will require some time to get the bonds printed and ready for delivery.

Hoping to hear from you soon, I am, very respectfully, your obedient servant,

THOMAS L. VAIL,
Chairman Board County Commissioners.

President Johnston moved that the directors in the Charlotte, Columbia & Augusta Railroad Company be invited to take seats in the meeting. Carried.

President Johnston offered the following resolution:

Resolved, by the stockholders of the Atlantic Tennessee & Ohio Railroad Company, now in session, That the subscription of one hundred thousand dollars, in the bonds of the county of Mecklenburg, with conditions thereto annexed, be, and the same is hereby, accepted upon the conditions offered.

Col. Thomas A. Allison submitted a paper-writing showing that the commissioners of Iredell County had subscribed $60,000 to the capital stock of the Atlantic, Tennessee & Ohio Railroad Company.

92 President Johnston moved that the subscription of Iredell County be received. Carried.

R. I. McDowell moved that a committee of three be appointed by the Chair to nominate officers.

R. F. Simonton moved to make the committee five. Amendment adopted and motion carried as amended. The Chair appointed the following as the committee: E. B. Drake, T. H. Brem, Isaac Harris, R. M. Oates, and Thomas A. Allison.

The committee raised for that purpose reported the following nominations for directors:

William Johnston, John A. Young, R. M. Oates, W. R. Myers, R. I. McDowell, S. A. Sharpe, and R. F. Simonton.

The Chair appointed C. A. Carlton and C. H. Manson to conduct the ballot, the result of which they declared to be as follows:

William Johnston	received	2,151	votes.
R. I. McDowell	"	2,151	"
W. R. Myers	"	2,183	"
R. F. Simonton	"	2,188	"
S. A. Sharpe	"	2,156	"
J. A. Young	"	1,979	"
R. M. Oates	"	1,984	"

The foregoing having received a majority of the stock, they were declared duly elected.

A. B. Spring offered the following resolution:

Resolved, That the surplus assets of one hundred and twenty-five thousand dollars now on hand, belonging to the road, be divided in stock, pro rata, among the present stockholders, and certificates of

93 stock be issued accordingly, and the fractions of stock involved by the distribution be paid by the receivers at 50 per cent. of its par value.

President Johnston proposed the following as a substitute for the resolution:

Resolved, That a stock-dividend of 50 per centum be, and is hereby, declared, and is authorized to be issued to the old stockholders, and the fractions of stock be paid for by the holders at fifty per cent. of the par value.

The amendment was accepted. The resolution, as amended, was unanimously adopted.

Mr. Simonton moved that the chairman appoint three stockholders to act as a finance committee. Carried.

The chair appointed the following as the committee: T. H. Brem, Rufus Barringer, and T. A. Allison.

General Barringer introduced the following resolution:

Resolved, as the sense of this meeting, the president and directors of the company be authorized to proceed as rapidly as possible with the reconstruction of the A., T. & O. R. R., and to this end they are invested with full power to call for and receive additional subscriptions or other

monies, and to act, in relation thereto, in as full and ample a manner as the stockholders themselves might do. Adopted.

Mr. Simonton moved that 250 copies of the proceedings of this
94 meeting, together with the report of Gen. Young's committee, be printed in pamphlet form for the use of the stockholders. Carried.

Moved, That this meeting adjourn, to meet in Statesville, on the last Thursday in July, 1871. Carried.

JOHN YOUNG, *Chairman.*

E. B. DRAKE,
FRANCIS JUSTICE,
Secretaries.

CAROLINA NATIONAL BANK OF COLUMBIA, S. C., L. D. Childs & C. H. Manson,
vs.
ATLANTIC, TENNESSEE & O. R. R. Co., CH. & So. Ca. R. R. Company, & others.

It is agreed that the within proceedings & reports may be read in evidence in the above-stated case, now pending in the circuit court, U. S., for the district of North Carolina, in equity, as an exhibit, without further proof offered by plaintiffs.

Oct. 5th, 1871.

H. W. GUION,
Sol. for Pl'ffs.
JOS. H. WILSON,
Sol. for Def'n's.

95 And afterwards, to wit, on rule-day, Nov'r 6th, 1871, the following motions and orders are made:

Defendants are notified that plaintiffs will move for an "order of publication," & that the above-entitled cause "shall be set for hearing" on the next rule-day, in said court, viz, the 1st Monday in November next.

Charlotte, October 19th, 1871.

H. W. GUION,
Sol. for Pl'ffs.

Upon motion this day made unto this court by H. W. Guion, being of counsel for the above-named plaintiffs, it was alleged that the defendants, having put in their answers to the bill of the plaintiffs that the plaintiffs have replied thereto, and witnesses have been examined, and therefore it was prayed that publication in this cause may forthwith pass, which, upon reading an affidavit of notice of this motion, is ordered accordingly.

96 Upon motion this day made unto this court by H. W. Guion, being of counsel for the above-named plaintiffs, it was alleged that an order of publication has been made in this cause, & therefore it was prayed to be set for hearing at the next regular term of this court, upon the last Monday in November next, or as soon thereafter as the same can be heard.

Which said motions are endorsed: "Assented to by the defendant's counsel."

And the said defendants, by their counsel, Wilson, Barringer and Phillips and Merrimon, on the 22d day of November, 1871, file the depo-

sition of William Johnson as evidence in this cause, which said deposition and the commission thereto annexed are in the words and figures following, to wit:

97 *Deposition of W'm Johnston.*

L. D. CHILDS & OTHERS
vs.
ATLANTIC, TENNESSEE & OHIO, & CHARLOTTE, Columbia and Augusta Railroad Companies.

Deposition of W'm Johnston.

I was president of the Atlantic, Tennessee and Ohio Railroad in North Carolina, from 1858 until within the last six months; am now, and have been president of the Charlotte and South Carolina Railroad, and of the Charlotte, Columbia & Augusta Railroad, (made by the consolidation of said Charlotte & South Carolina and Columbia and Augusta Railroad Companies,) for sixteen years. By virtue of authority from the stockholders of the said A. T. & Ohio R. R. Company, I caused to be issued during the year 1862 one hundred and fifty-one thousand dollars of first-mortgage bonds, and by the authority of the stockholders of the Charlotte & South Carolina Railroad Company caused the same to be endorsed by this company. These bonds were secured by a first mortgage upon the entire property of the obligor, as set forth in plaintiffs' bill, and matured twenty thousand dollars annually from and after Nov. 1st, 1869, until Nov., 1874, with one thousand maturing Nov.,
98 1875. The bonds in controversy, twenty-five thousand were a portion of this issue, and do not mature until Nov., 1872 and 1873. These bonds were sold by me the 17th May, 1862, to the Exchange Bank of Columbia, in South Carolina, for confederate currency, at about 91½ c'ts on the dollar, and payment therefor received in said currency in Columbia, S. C. They remained in possession of said Exchange Bank till the fall of 1868, when with the view of liquidating its liabilities said bank sold them, and I became the purchaser. I retained them until May, 1869, when I exchanged them for bonds of the said Charlotte and South Carolina Railroad Company at par. Subsequently a portion of the directors of said bank expressing dissatisfaction with the sale of them, I returned them to the bank, from which the present plaintiffs purchased them. Before the sale was rescinded, however, I advised the directors of the bank that they were subject to the confederate scale. I well recollect informing Lysander D. Childs, pl'ff, president of the Carolina National Bank, C. H. Baldwin, receiver of said bank, Dr. Kennedy, and J. P. Carroll, attorney for the bank, and all being directors of said institution, J. P. Southern and myself, with these, constituting the board. This was the subject of deliberate conversation at more than one interview with said directors. C. H. Manson, then acting as treasurer of the Charlotte and South Carolina Railroad Company, was also informed by me before the bonds were returned to the bank that the bonds were subject to the confederate scale.

The mortgage was executed with the trustees therein named as set forth by plaintiffs, and one hundred and fifty-one thousand of bonds were issued under said mortgage and endorsed by the Charlotte
99 and South Carolina Railroad Company.

I do not know whether bond No. ninety has been presented for payment and the same refused or not. If payment has been refused it

was owing to the fact that the holder refused to submit to the scale. I have not the bond present, but presume it and coupons are still unpaid.

A number of bonds and coupons of said Atlantic, Tennessee & Ohio Railroad Company have been redeemed at from forty to sixty-five per centum of their par value and paid for in Federal currency, and quite a number of said bonds were redeemed by exchanging the bonds of the Charlotte & South Carolina Railroad at par for the same. These bonds were so exchanged after the legislature of North Carolina had made a loan in State bonds of two millions of dollars to complete and extend the road, under the belief on the part of the directors that all the mortgage-bonds of the Atlantic, Tennessee & Ohio Railroad would have to be discharged before the State would issue her bonds to the company as authorized by the legislature. After redeeming a portion of the bonds, the company ascertained that this was not necessary to secure the loan of two millions of dollars, and consequently ceased to take up any more of the first-mortgage bonds not due, by exchange. In making the entries on the books of the company the treasurer took credit for the amount paid for each bond, whether in cash or by exchange, and charged the par value thereof as that amount of debt redeemed. I do not know that the president or any other officer of said company has repeatedly, or at any time, stated to members of the community, or any one, that said bonds were not confederate paper, but payable in
100 sound currency. I always stated that said bonds were well se- cured and good before the scaling act was passed; that both the obligor and endorser were solvent companies. The company has not issued any of these bonds since the fall of 1862.

I know of no other officer of said railroad company owning any of said bonds, except myself. I held the said twenty-five thousand dollars of bonds referred to as returned to said bank, and three or four thousand dollars of bonds additional, the majority of which were purchased in the spring of 1862. These were exchanged for bonds of the Charlotte & South Carolina Railroad Company, as well as the others, at par, except one purchase from the First National Bank of Charlotte. The Charlotte & South Carolina Railroad held forty thousand dollars of the bonds of the Atlantic, Tennessee & Ohio Railroad, purchased from it in the spring of 1862. These were also charged up. The subject of the value between the bonds so exchanged has always been left an open question, subject to a fair adjustment between the two railroad companies.

The Atlantic, Tennessee and Ohio Railroad Company is now, and has been at all times, able to meet all its bonds and coupons as they mature. The company is entirely solvent for all its obligations.

The Charlotte & So. Ca. R. R. became indebted to the A., Tenn. & O. R. R. Co. in the year 1867 & 1868.

The exchange of bonds were made by me in the spring of 1869, and the C. & So. Ca. bonds were dated and issued in May of that year, according to my recollection.

101 The exchange was an even exchange.

Further this deponent sayeth not.

W'M JOHNSTON.

NORTH CAROLINA, *Mecklenburg County:*

The foregoing deposition of William Johnston was taken, subscribed, and sworn to before me, by consent of parties, under and by virtue of a commission to me directed from the circuit court of the United States, for the district of North Carolina, in equity, to be read as evidence in

behalf of the defendants, in a cause wherein "The Carolina National Bank of Columbia, S. C.," L. D. Childs, and C. H. Manson are plaintiffs, and The Atlantic, Tennessee & Ohio Railroad Company in N. C., The Charlotte & South Carolina R. R. Company, Joseph H. Wilson, and Anderson Mitchell are defendants.

Done this 21st of October, 1871.

FREDERICK NASH,
Commissioner.

We, as counsel for the parties, agree that the within deposition of W'm Johnston be read on the trial of the suit without exception.

JOSEPH H. WILSON,
Atto. for Def'n'ts.
H. W. GUION,
Sol. pro Pl'ff.

102 UNITED STATES OF AMERICA,
North Carolina District:

Circuit court, fourth circuit.

The President of the United States of America to Frederick Nash, of Charlotte, North Carolina, greeting:

We, reposing especial trust and confidence in your integrity, do authorize and empower you to cause William Johnston, of Charlotte, N. C., to appear before you, at such time and place as you may appoint, and him on oath to examine, touching all such matters and things as he shall know of and concerning a certain matter of controversy pending in our circuit court of the United States for the district of North Carolina, wherein the Carolina National Bank of Columbia, S. C., L. D. Childs, and C. H. Manson, are plaintiffs, and The Atlantic, Tennessee, & Ohio R. R. Co., The C. & S. C. R. R. Co., Joseph H. Wilson, and Anderson Mitchell are defendants. And his depositions in writing, by you so taken, the same to transmit, sealed with your seal, to the judges of our said circuit court of the United States, to be held for the district of North Carolina, at Raleigh, on the last Monday in November next, to be read in evidence in behalf of the defendants in said controversy.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the 1st Monday in June, 1871, and in the ninety-sixth year of the Independence of the United States.

[L. S.] N. J. RIDDICK, *Clerk.*

103 And at the same time the following agreement and depositions are filed:

104 Circuit court U. S., district of North Carolina. In equity.

THE CAROLINA NATIONAL BANK OF COLUMBIA, S. C., Lysander D. Childs, & C. H. Manson, plaintiffs,
vs.
THE ATLANTIC, TENNESSEE & OHIO RAILROAD Company, The Charlotte & South Carolina Railroad Company, Joseph H. Wilson, and Anderson Mitchell, defendants.

It is agreed by the parties in the above stated that the within copies of depositions of J. P. Carroll, C. W. Baldwin, Dr. A. W. Kennedy, C.

H. Manson, and L. D. Childs, taken in a case in the same mentioned, may be read in evidence in the above-entitled cause upon the hearing of the same.

Oct. 5th, 1871.

H. W. GUION,
Sol. for Comp's.
WILSON & BARRINGER,
Sol's for Def'n'ts.

105 STATE OF NORTH CAROLINA,
Mecklenburg County:

CAROLINA NATIONAL BANK OF COLUMBIA, South Carolina, plaintiff,
against
ATLANTIC, TENNESSEE AND OHIO RAILROAD Company, defendant.

To W. K. Bachman & F. W. McMaster, greeting:

You are hereby empowered to cause to come before you at the office of W. K. Bachman, esq., and at such time as shall be convenient, C. W. Baldwin, A. W. Kennedy, J. P. Carroll, & other witnesses on the part of the above plaintiff, and then, together with such others as may be brought before you for the purpose, to examine on oath upon the interrogatories and cross-interrogatories hereto annexed, and touching all they may know of the matters in controversy, in an action now pending in a justice court, before A. H. Martin, J. P., for the county of Mecklenburg, in the State aforesaid, wherein the plaintiff and defendant are as above stated; their evidence you shall reduce to writing. You will return this commission, and the interrogatories, and the evidence of the witnesses, together with a certificate, under your hand and seal, of when and where and how you shall have executed the power, sealed in an envelope and directed to the clerk of the superior
106 court of Mecklenburg County at Charlotte, county of Mecklenburg, on or before 25th March next. You will endorse on the envelope the name of the case.

Witness E. A. Osborne, clerk of the superior court of Mecklenburg County, and the seal of said court. Issued the 23rd day of Feb'y, 1871.

[L. S.] E. A. OSBORNE, *Clerk.*

NORTH CAROLINA,
Mecklenburg County:
Justice's court, A. H. Martin, esq., justice.

Interrogatories to be propounded to witnesses to be produced, sworn, and examined in a certain cause now depending and at issue before A. H. Martin, esq., an acting justice of the peace, in his court at Charlotte, county and State aforesaid, wherein the Carolina National Bank of Columbia, So. Ca., is plaintiff, and the Atlantic, Tennessee & Ohio Railroad Company of North Carolina is defendant, on the part of the said plaintiff.

Questions for Messrs. C. H. Baldwin, A. W. Kennedy, J. P. Carroll, & others, witnesses on part of plaintiff.

First. Are you acquainted with the parties to this suit?

2nd. Were you acquainted with and had you any connection
107 with the Exchange Bank of South Carolina from 1861 to 1870? If so, state that connection.

3rd. Was the said bank the owner of any of the coupon-bonds of the defendant? If so state how many of them, their dates, amounts, numbers of them, and what did the bank pay for them.

4th. State what became of the bonds of the Atlantic, Tennessee and Ohio R. R. Co., the property of the Exchange Bank. If sold, by whom and to whom, and for what price?

5th. State explicitly, if you know, that they were sold to the Charlotte and South Carolina R. R. Co. by Col. Wm. Johnston, and state also, if you know, whether he was or not the president of that Railroad Company, and also the Atlantic, Tennessee & Ohio R. R. Co.

6th. State, if you know whether the Charlotte & South Carolina R. R'd Co. was or was not largely indebted to the Atlantic, Tennessee & Ohio R. R'd Co., and whether said bonds were not passed to the credit of the former company, and at what rates, and whether any deduction was then, or at any other time, claimed on the score that said bonds were payable in confederate money.

7th. Give the dates, as near as you can, to all the transfers of said bonds.

8th. Were said bonds, or others in their place, re-issued and returned to said Exchange Bank, and when?

9th. To whom were said bonds sold since their re-issue and re-
108 turn to the bank, and was bond numbered 242 one of them?

10th. State, if you know, how many, and which of them, by numbers, became the property of plaintiff.

11th. State, if you know, whether or not it was ever alleged or pretended that the bonds issued by the Atlantic, Tenn. & Ohio R. R'd Co. were solvable in confederate money.

12th. State, if you know, whether the Atlantic, Tenn. & Ohio R. R'd Co. redeemed other bonds from other parties of the same issue or character. If so, the amounts, dates, and at what rates.

13th. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this action, or either of them, or that may be material to the subject of this examination, or to the matters in question in this cause? If yea, set forth the same, and all the circumstances and particulars thereof fully and at large, according to the best of your knowledge, remembrance, and belief, as if you were thereto particularly interrogated, together with your reasons at large.

H. W. GUION,
Counsel for Plaintiffs.

Interrogatories to be propounded to C. H. Manson, a witness to be examined in the above-named action for plaintiff.

109 1st interrog. Are you acquainted with the parties to this action, and how long have you been so acquainted?

2nd. Were you connected officially with the Atlantic, Tennessee and Ohio R. R'd Company, and the Charlotte & South Carolina R. R'd Company? If yea, in what capacity? When did that connection begin, and when did it terminate?

3rd. State, if you know, that certain bonds, and the number & amount, of the Atlantic, Tennessee & Ohio R. R'd Company were sold to the Exchange Bank of South Carolina, and at what price and what was paid for them.

4th. Was such price the regular market price in bank currency or specie of such bonds?

5th. State all you know in relation to the transfer of said bonds from

the bank to any other person or persons; whether they were sold to the Charlotte & South Carolina Railroad Company or not, and whether they were afterwards redeemed by the Atlantic, Tennessee & Ohio Railroad Company, and at what rates and prices, and by whom such transactions were ordered and directed?

6th. State if such bonds were afterwards re-issued, and when, and to whom.

7th. State if any of said bonds, at any of the settlements, sales, or exchanges, were estimated as solvable in confederate currency.

110 8th. State if you know, and how you do know, whether any other bonds of other parties, of the same issue or character, were redeemed by the Atlantic, Ten. & Ohio R. R. Co., at par or otherwise, and by whose direction and authority.

9th. State, if you can, how the entries in relation to these bonds were made upon the company's books, and by whose order.

10th. Did any of the bonds of the Exchange Bank become the property of the Carolina National Bank of Columbia, and when and what price?

11th. Before purchasing, did any officer or officers of the Carolina National Bank call at the office of the Atlantic, Tennessee & Ohio R. R. Company, for information as to the character and value of the bonds; to examine the reports of the railroad company, and otherwise learn the solvency of the company and its ability and willingness to pay its debts? If yea, state what information was received by such officer or officers, and by whom given.

12th. Was the Atlantic, Tennessee & Ohio R. R. Company at that time solvent or insolvent, and was it able and willing to redeem its bonds at par?

13th. Can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this action, or either of them, or that may be material to the subject of this examination,

111 or to the matter in question in this cause? If yea, set forth the same and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance, and belief, as if you were thereto particularly interrogated, together with your reasons at large.

H. W. GUION,
Counsel for Plaintiff.

Interrogatories to be propounded to Col. L. D. Childs, of Columbia, So. Ca., a witness to be examined in the above-named action in behalf of plaintiff.

1st interrog. Are you acquainted with the parties to this action, and how long have you been so acquainted?

2nd. Were you connected officially or otherwise with the Exchange Bank of South Carolina, and how, and for what time?

3rd. Did you know that said bank owned certain bonds of the Atlantic, Tennessee & Ohio R. R'd Company; what amount; when did said bank get them, and what did it pay for them?

4th. Was it ever agreed or understood between the railroad company and the bank that said bonds were solvable in confederate currency?

5th. State what became of the bond, so owned by the Exchange Bank, and all you know in relation thereto.

112 6th. Did any portion of said bonds afterwards become the property of the Carolina National Bank, and when?

7th. State the numbers of said bonds, and especially whether number 242 was one of them.

8th. Before purchasing said bonds by the Carolina National Bank, did you, or any other officer of the bank, make inquiries as to their character and value, and solvency of the railroad company? If yea, state of whom you made inquiries, and what was the information received.

9th. Did you learn from the treasurer, or other officers of the railroad company, or from the reports of the company, that said railroad company was redeeming its bonds at par, or near par in the present currency? Or what was your information on this point?

10th. Are the bonds, now in the hands of H. W. Guion, at Charlotte, N. C., the same bonds that the Carolina National Bank purchased of the Exchange Bank?

11th. Can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this action, or either of them, or that may be material to the subject of your examination, or to the matters in question in this case? If yea, set forth the circumstances and particulars thereof fully and at large, according to the best of your knowledge, remembrance, and belief, as if you were particularly interrogated, together with your reasons, at large.

H. W. GUION,
Counsel for Pl'tff.

113 Cross-interrogatories to be propounded to Messrs. C. H. Baldwin, A. W. Kennedy, J. P. Carroll, & others.

1st. If you answer the 6th direct interrogatory in the affirmative, state the sources of your knowledge. Did not Col. W'm Johnston inform you, as directors of the Exchange Bank, that the bonds and coupons in question were subject to a deduction by reason of their issue during the war, and negotiated for confederate currency?

2d. If, in answer to 9th direct interrogatory, you state that you know said bonds were sold, state to whom the sale was made, and the price paid for the bonds and matured coupons attached, and date of said sale. Did the party or parties purchasing buy in their own names, or on account of others, and whom?

3rd. If you state your knowledge in regard to the matter of enquiry in direct interrogatory 11th, state if Col. Johnston did not expressly inform you that said bonds and coupons were subject to the discount of confederate currency as of the date of their issue.

4th. If you answer the 12th direct interrogatory in the affirmative, give the means of your knowledge.

5th. Are you not aware that an appropriation by the legislature of North Carolina, at its session of '68 & '69, for the extension and completion of the Atlantic, Tennessee & Ohio Railroad, and the consequent action of the stockholders of said corporation, had the effect of enhancing the value of its outstanding bonds?

114 Cross-interrogatories to be propounded to C. H. Manson.

1st. If, in answer to 5th direct interrogatory, you answer that said bonds were redeemed by the Atlantic, Tennessee & Ohio Railroad Company, state when and how they were redeemed; and, if instructions were given to that effect, by whom were they given; and where, and when, and in whose presence; and why the bonds so redeemed were not cancelled.

2nd. If, in answer to 6th direct interrogatory, you state that said bonds were "re-issued," state what you mean by their "re-issue."

3rd. If you answer the 8th direct interrogatory in the affirmative, state the dates of the issue of the bonds thus redeemed, and the time of their maturity.

4th. If your answer to 10th direct interrogatory is in the affirmative, state if you were not interested in the transaction as a partner, and who furnished the money to pay for the bonds and coupons. Do you not hold $6,500 of said bonds, and $3,500 of the coupons or other large amounts, of said bonds? When, where, and how did you acquire the same? Where did you get the funds to make the purchase? Were you not jointly concerned with L. D. Childs & W. B. Gulick in the purchase of said securities, or any of them? Did you purchase any other bonds or coupons of said company, other than those held by the Exchange Bank; and, if so, from whom, and when?

115 5th. If you answer the 11th direct interrogatory in the affirmative that some of the officers of the Carolina National Bank called at the office of the Atlantic, Tennessee & Ohio R. R. Company, state the names of the officers & others who called for information. Did they not do so at your instance and solicitation, and did you not urge or invite them to become your partners, or interested with you in the purchase of said bonds and coupons? Did you not exhibit the books of the company to them? Was not such exhibition in violation of the rules and regulations of the company? Had you not been informed by said Childs and Gulick, or either of them, that if you saw a favorable opportunity of making a speculation in buying stocks or bonds of either of the companies you represented as treasurer, that the means should be furnished by them, or either of them, to make such purchase?

6th. In answer to 13th direct interrogatory, state if you were not engaged in speculating in the securities and credits of the railroad companies of which you were treasurer, and did you not use the funds of said companies in furthering your interest in this respect. Have you not recently been removed from your position as treasurer on account of alleged misconduct in your official action? Do you not now entertain feelings of hostility towards the president of the defendant and the corporations he represents as president? Have you not gone to Charlotte, North Carolina, for the purpose of aiding counsel for the plaintiff in the preperation of the direct interrogatories filed in this case?

116 Cross-interrogatories to be propounded to L. D. Childs.

1st. If you answer the fourth direct interrogatory in either the affirmative or negative, state if you were not informed by Col. Johnston that said bonds would be subject to a deduction on account of the depreciation of confederate money, in which said bonds were solvable, and was not this fact known and talked of by the board of directors of the bank?

2nd. If, in answer to 5th direct interrogatory, you state that the bonds in question were sold by the late Rufus M. Johnston, the then president of the Exchange Bank, was not the transaction brought to your attention by him, and did you not approve of the same? Did you not, subsequently to the death of said R. M. Johnston, inform Col. William Johnston, who then held said bonds as president of the Charlotte & South Carolina R. R. Company, of dissatisfaction on the part of Chancellor Carroll, D. Kennedy, C. H. Baldwin, directors of said Exchange Bank, with the sale of said bonds, which you professed to him that you urged a ratification, and advised him, on account of their dissatisfaction, to rescind the transaction? Were you not, at that time, a

director of the Charlotte and South Carolina R. R. Company? Do you not know that, at that time, by the action of the legislature of the State of North Carolina extending aid to the road of defendant, and the consequent action of its stockholders in the redemption of its bonds, that said bonds had materially appreciated in their market-value?

117 3rd. In answer to 6th direct interrogatory, state if you did not buy said bonds in conjunction with C. H. Manson and Maj. Gulick, or either of them, they, or either of them, being interested with you in said purchase. How many or what amount of said bonds did you buy on your account, or as president of the plaintiff, and what was paid by you for the same? How many, or what amount of said bonds were purchased by C. H. Manson, and who furnished the funds to enable him to make the purchase? Did not you and said Manson have consultations in regard to said bonds, and how the same could be obtained by purchase? Did he not suggest and invite you to co-operate with him in the purchase of said bonds? Did he not communicate to you the action of the board of directors of the R. R. companies, of which he was treasurer, after you ceased to be a director, for the purpose of promoting your mutual speculation?

4th. If, in answer to 9th direct interrogatory, you state that said company was redeeming its bonds, state in what way such redemption was made, and the market cash value of the securities offered in lieu thereof, and from what source, or from whom did you derive your information?

5th. State, in answer to 10th direct interrogatory, if any other person is interested in the bonds referred to, and, if so, whom, and to what extent.

F. W. McMasten, esq., is hereby nominated on the part of defendant to as commissioner, to co-operate with W. K. Bachman in executing the commission.

BARRINGER & WILSON,
Atto's for Defendant.

118 STATE OF NORTH CAROLINA,
Mecklenburg County:

Justice's court, Charlotte, A. H. Martin, esq., justice.

THE CAROLINA NATIONAL BANK OF COLUMBIA, So. Carolina, plaintiff,
v.
THE ATLANTIC, TENNESSEE & OHIO RAILROAD Company of N. C., defendant.

Plaintiff will take the depositions of C. H. Baldwin, A. W. Kennedy, J. P. Carroll, C. H. Manson, L. D. Childs, & others, all residents of Columbia, S. C., before W. K. Bachman, at his office in Columbia, S. C., to be read on the trial of the above-stated case; and that the interrogatories to be propounded to said witnesses are now filed in the office of the clerk of the superior court for Mecklenburg County, N. C., and defendant may attend within five days after service of this notice before said clerk, & move respecting the commission, and file cross-interrogatories to the witnesses.

PLAINTIFF,
By H. W. GUION, *Attorney.*

CHARLOTTE, *Feb'y 11th*, 1871.

119 THE STATE OF NORTH CAROLINA,
Mecklenburg County:

CAROLINA NATIONAL BANK OF COLUMBIA, South Carolina, plaintiff,
against
ATLANTIC, TENNESSEE & OHIO RAILROAD Company, defendant.

Deposition of J. P. Carroll, a witness in above-stated case, residing at Columbia, South Carolina, produced, sworn, and examined before us by virtue of annexed commission.

To 1st interrogatory witness says: I know of the existence of the corporation, plaintiff, and have heard of the other.

2nd. I was a stockholder of the bank, and, for a few months, a director.

3rd. I know the bank claimed to be owner of certain bonds of dedendant. The aggregate of principle was about $25,000; aggregate of principle and interest, about $32,000 or $33,000 in 1869; don't know what the bank paid for them. One of the bonds is numbered 201. I do not know the numbers of the others.

4th. Mr. William Johnston claimed those bonds under a purchase from his brother, Rufus Johnston, who was president of the Exchange Bank. I think Mr. William Johnston told me he paid between 50 and 60 cents in the dollar for them.

5th. I know that Mr. William Johnston is president of the Charlotte, Columbia & Augusta Railroad, formerly Charlotte and South
120 Carolina Railroad, and was president of that road. I have heard he was president of the other road. I know nothing of the sale spoken of.

6th. I know nothing of the matters enquired of in this interrogatory.

7th. I cannot, except that a redelivery of those bonds was made some time in 1869 by Mr. W'm Johnston to the receiver of Exchange Bank.

8th. I have answered that question in my answer to 7th interrogatory.

9th. I know nothing of the matter enquired of.

10th. I do not know.

11th. I do not know.

12th. I do not know.

13th. I do not know anything further.

J. P. CARROLL.

Sworn to before us this 4th March, 1871.

W'M K. BACHMAN, [SEAL.]
Commissioner.

F. W. McMASTER, [SEAL.]
Commissioner.

To the cross-interrogatories witness says:

1st. I do not think Col. Johnston ever conversed with me on that subject.

2nd. To the 2nd, 3rd, 4th, and 5th cross-interrogatories witness says he has already stated all that he knows, and can make no answer to the several interrogatories.

J. P. CARROLL.

Sworn to before us this 4th March, 1871.

W'M K. BACHMAN, *Com.* [SEAL.]
F. W. McMASTER, *Com.* [SEAL.]

121 Commission then adjourned to meet Monday, 6th March, 1871.

C. W. BALDWIN, duly sworn, says to the direct interrogatories:

1st. I know Carolina National Bank, and Mr. Johnston, representative of other corporation.

2nd. I was elected director of Exchange Bank about May, 1862. I was appointed receiver in November, 1869.

3rd. I only know amount purchased before I was director. The amount was $25,000, par value. The exact price paid I cannot know.

4th. When I was appointed receiver I found the bonds in hands of Col. W'm Johnston. After some delay they were turned over to me, and were sold to Col. Childs at $25,000, interest from 1861 or 1862 thrown in.

5th. I know he was president of the Charlotte road, and he claimed to have been purchaser of the bonds for that road. I don't know, except by report. He was president of the Atlantic, Tennessee & Ohio road.

6th. I know nothing of the matters enquired of in this interrogatory.

7th. The only transfer I know of were the transfer of the bonds to me by Col. Johnston, in May, 1870. Immediately after that they were sold to Col. Childs.

8th. All I know is stated in 7th answer.

9th. Sold to Col. Childs. I cannot say if the bonds were re-issued or not; know nothing of the numbers of the bonds.

10th. I cannot say.

11th. I know nothing of this.

12th. I do not know from my own knowledge.

13th. I know nothing more.

122 C. H. BALDWIN.

Sworn to before us this 6th March, 1871.

W'M K. BACHMAN. *Com'r.* [SEAL.]
F. W. McMASTER, *Com'r.* [SEAL.]

To the cross-interrogatories witness says:

1st. Col. Johnston did so inform me.

2nd. Sale made to Col. Childs at $25,000, coupons thrown in. He represented besides himself the estate of E. J. Arthur, Chancellor J. P. Carroll, and a Mr. Beaty, of Greenville, who had claims against the Exchange Bank.

3rd. I only recollect indistinctly that Col. Johnston remarked at some time that he should demand the scaling of the bonds.

4th. Says nothing.

5th. Know nothing of this.

C. H. BALDWIN.

Sworn to before us this 6th March, 1871.

W'M K. BACHMAN. [L. S.]
F. W. McMASTER, *Com.* [L. S.]

The commission then adjourned to meet March 9th, 1871.

Dr. A. W. KENNEDY, being duly sworn, answers:

1st interrogatory witness says: Yes.

2nd. I was director from 1855 to 1865.

3rd. The bank made a purchase of $25,000 of those bonds (par value) some time in 1862. I do not know number or dates. The purchase was in latter part of 1862. The bank paid near par value, I think.

123 4th. R. M. Johnston, president of the bank, sold the bonds to Col. W'm Johnston for $16,000 U. S. currency; and gave their joint note for the purchase-money.

5th. I cannot answer. I know nothing of this.

6th. I know nothing of the matters enquired of.

7th. I do not remember dates.

8th. Bonds were returned upon demand of the board of directors. Don't know when.

9th. I know nothing of this interrogatory.

10th. I don't know.

11th. I don't know.

12th. I don't know.

13. I know nothing more.

A. W. KENNEDY.

Sworn to before us this 9th March, 1871.

W'M K. BACHMAN, *Com.* [SEAL.]
F. W. McMASTER, *Com.* [SEAL.]

To the cross-interrogatories witness says:

1st. I recollect nothing except that the bank bought for confederate money in 1862.

2nd. I have stated all I know in my answer to the 4th direct interrogatory.

3rd. I had no conversation with Col. Johnston that I remember of.

4th. I know nothing of this matter.

5th. I do not know.

A. W. KENNEDY.

Sworn to before us this 9th March, 1871.

W'M K. BACHMAN, *Com'r.* [L. S.]
F. W. McMASTER, *Com'r.* [L. S.]

124 C. H. MANSON, being duly sworn, says to the direct interrogatories:

1st interrogatory, witness says: I know the parties to this action. I have known plaintiff since organization as bank in June, 1868. The defendant I have known since April, 1863.

2nd. Yes; I was treasurer, secretary, and general accountant of first-named company, Atlantic, Tennessee & Ohio R. R. Co., from about March, 1867, until September, 1870, and filled same offices in Charlotte and South Carolina R. R'd Co. from March, 1867, until July, 1869, when this road was consolidated with Augusta road, and then named Charlotte, Columbia and Augusta Railroad Company; remained in connection with said road until Dec. 15th, 1870.

3rd. Fifty bonds of Atlantic, Tennessee & Ohio Railroad Company of $500 each, numbered from 201 to 250 both inclusive, were sold to the Exchange Bank, and from all the information I could gather from the books and correspondence of said company, I should say they were sold to said bank about April, 1862, for 90 per cent. of their face value.

Sworn to before us this 4th March, 1871.
WM K. BACHMAN, *Com.* [SEAL.]
F. W. McMASTER, *Com.* [SEAL.]

121 Commission then adjourned to meet Monday, 6th March, 1871.

C. W. BALDWIN, duly sworn, says to the direct interrogatories:

1st. I know Carolina National Bank, and Mr. Johnston, representative of other corporation.

2nd. I was elected director of Exchange Bank about May, 1862. I was appointed receiver in November, 1869.

3rd. I only know amount purchased before I was director. The amount was $25,000, par value. The exact price paid I cannot know.

4th. When I was appointed receiver I found the bonds in hands of Col. W'm Johnston. After some delay they were turned over to me, and were sold to Col. Childs at $25,000, interest from 1861 or 1862 thrown in.

5th. I know he was president of the Charlotte road, and he claimed to have been purchaser of the bonds for that road. I don't know, except by report. He was president of the Atlantic, Tennessee & Ohio road.

6th. I know nothing of the matters enquired of in this interrogatory.

7th. The only transfer I know of were the transfer of the bonds to me by Col. Johnston, in May, 1870. Immediately after that they were sold to Col. Childs.

8th. All I know is stated in 7th answer.

9th. Sold to Col. Childs. I cannot say if the bonds were re-issued or not; know nothing of the numbers of the bonds.

10th. I cannot say.

11th. I know nothing of this.

12th. I do not know from my own knowledge.

13th. I know nothing more.

122 C. H. BALDWIN.

Sworn to before us this 6th March, 1871.
WM K. BACHMAN. *Com'r.* [SEAL.]
F. W. McMASTER, *Com'r.* [SEAL.]

To the cross-interrogatories witness says:

1st. Col. Johnston did so inform me.

2nd. Sale made to Col. Childs at $25,000, coupons thrown in. He represented besides himself the estate of E. J. Arthur, Chancellor J. P. Carroll, and a Mr. Beaty, of Greenville, who had claims against the Exchange Bank.

3rd. I only recollect indistinctly that Col. Johnston remarked at some time that he should demand the sealing of the bonds.

4th. Says nothing.

5th. Know nothing of this.

C. H. BALDWIN.

Sworn to before us this 6th March, 1871.
WM K. BACHMAN. [L. S.]
F. W. McMASTER, *Com.* [L. S.]

The commission then adjourned to meet March 9th, 1871.

Dr. A. W. KENNEDY, being duly sworn, answers:

1st interrogatory witness says: Yes.

2nd. I was director from 1855 to 1865.

3rd. The bank made a purchase of $25,000 of those bonds (par value) some time in 1862. I do not know number or dates. The purchase was in latter part of 1862. The bank paid near par value, I think.

123 4th. R. M. Johnston, president of the bank, sold the bonds to Col. W'm Johnston for $16,000 U. S. currency; and gave their joint note for the purchase-money.

5th. I cannot answer. I know nothing of this.

6th. I know nothing of the matters enquired of.

7th. I do not remember dates.

8th. Bonds were returned upon demand of the board of directors. Don't know when.

9th. I know nothing of this interrogatory.

10th. I don't know.

11th. I don't know.

12th. I don't know.

13. I know nothing more.

A. W. KENNEDY.

Sworn to before us this 9th March, 1871.

W'M K. BACHMAN, *Com.* [SEAL.]
F. W. McMASTER, *Com.* [SEAL.]

To the cross-interrogatories witness says:

1st. I recollect nothing except that the bank bought for confederate money in 1862.

2nd. I have stated all I know in my answer to the 4th direct interrogatory.

3rd. I had no conversation with Col. Johnston that I remember of.

4th. I know nothing of this matter.

5th. I do not know.

A. W. KENNEDY.

Sworn to before us this 9th March, 1871.

W'M K. BACHMAN, *Com'r.* [L. S.]
F. W. McMASTER, *Com'r.* [L. S.]

124 C. H. MANSON, being duly sworn, says to the direct interrogatories:

1st interrogatory, witness says: I know the parties to this action. I have known plaintiff since organization as bank in June, 1868. The defendant I have known since April, 1863.

2nd. Yes; I was treasurer, secretary, and general accountant of first-named company, Atlantic, Tennessee & Ohio R. R. Co., from about March, 1867, until September, 1870, and filled same offices in Charlotte and South Carolina R. R'd Co. from March, 1867, until July, 1869, when this road was consolidated with Augusta road, and then named Charlotte, Columbia and Augusta Railroad Company; remained in connection with said road until Dec. 15th, 1870.

3rd. Fifty bonds of Atlantic, Tennessee & Ohio Railroad Company of $500 each, numbered from 201 to 250 both inclusive, were sold to the Exchange Bank, and from all the information I could gather from the books and correspondence of said company, I should say they were sold to said bank about April, 1862, for 90 per cent. of their face value.

4th. Yes; that price was about the regular market-price in currency of that date, namely, April, 1862.

5th. The lot of 50 bonds mentioned in my answer to 3rd interrogatory were bartered in May, 1869, by W'm Johnston to the Charlotte and South Carolina Railroad for and on account of the estate of R. M. Johnston, dec'd, and others, for bonds of Charlotte & South Carolina Railroad, and immediately afterwards they were redeemed from the Charlotte & So. Carolina Railroad by the Atlantic, Tennessee & Ohio Railroad at par, at Federal currency value, by a credit to the Charlotte & So. Carolina Railroad on books of Atlantic, Tennessee & Ohio
125 railroad, as an offset to certain loans made by Atlantic, Tennessee & Ohio Railroad to the Charlotte & So. Ca. Railroad, and the transactions were done by order & direction of W'm Johnston, president of both roads.

6th. Said bonds were afterwards re-issued, namely, in May, 1870, to the estate of R. M. Johnston, deceased, and others, in barter for bonds of the Charlotte, Columbia & Augusta Railroad Company at par, by an order of W'm Johnston, president of the Atlantic, Tennessee & Ohio Railroad Company.

7th. No.

8th. I know, as late treasurer, secretary, and general accountant of Atlantic, Tennessee & Ohio Railroad that other bonds of the same issue and character were redeemed by the said road, some at par, others at less than par, and others above par, by direction of W'm Johnston.

9th. Entry of the bonds referred to, when they were redeemed, *were* made as follows on books of Atlantic, Tenn. & Ohio R. R'd Co.: "Bonds payable Dr. to Charlotte & So. Carolina R. R'd Co., for amount of bonds received from latter company;" and when they were re-issued the entry was made as follows, "Bonds receivable Dr. to bonds payable," for bonds of Charlotte, Columbia & Augusta Railroad, received for bonds of Atlantic, Tenn. & Ohio Railroad Company. These entries are made by order of W'm Johnston, president.

10th. Yes; the Carolina National Bank purchased a portion of the lot of bonds referred to in 3rd interrogatories, about June, 1870, at par, including several years of accrued interest, which was thrown in.

11th. No; not to my knowledge.

12th. Atlantic, Tennessee & Ohio Railroad Company was, in my opinion, always solvent and able to pay its debts, but its willing-
126 ness to do so was seldom or never manifested.

13th. The president of the Atlantic, Tenn. & Ohio Railroad Company decided about May, 1870, that the bonded debt was subject to a confederate scale. My knowledge of the company enables me to say that this view was never entertained by any one connected with the company as expressed at any meeting of the board of directors; that I, as treasurer, on several occasions under personal supervision of the president during the period of four years, after the close of the war, prepared and submitted printed exhibits of the condition of the company, to the stockholders in convention, stating the bonds as liabilities at their face value, and the said exhibits were invariably approved by the stockholders.

C. H. MANSON.

Sworn to before us this 9th March, 1871.

WM K. BACHMAN, *Com'r.* [SEAL.]
F. W. McMASTER, *Com'r.* [SEAL.]

To the cross-interrogatories C. H. Manson says:

1st. To the first interrogatory: They were redeemed from the Charlotte & So. Carolina R. R'd Co. at par, at Federal currency value, by a credit of the Charlotte & So. C. R. R. Co., as an offset to certain loans made by the Atlantic, Tenn. & Ohio R. R. Co., to Charlotte & So. Ca. R. R. Co., not in the presence of any one to my recollection, but by order and direction of W'm Johnston, president, and they were not cancelled in consequence of an order from W'm Johnston, president.

2nd. They were re-issued in barter for bonds of Charlotte, Columbia, & Augusta Railroad.

3rd. The issue of the bonds was in early part of 1862: they matured at various dates from Nov. 1st, 1869, to Nov. 1st, 1875.

127 4th. I was not interested, and never have been, as partner or otherwise in purchase of bonds by Carolina Nat. Bank. I furnished the money from my own means to buy the bonds and coupons held by me. The amount held by me is correctly stated in the interrogatories.

I acquired the bonds and coupons in part from the receiver of Exchange Bank as a dividend, and by purchase from him and from various other parties at various times. I was not interested with either L. D. Childs, Mr. Gulick, or any one else.

5th. I have answered 11th direct interrogatory in the negative.

6th. I was not removed from my office of treasurer of Charlotte, Columbia & Augusta road for any official misconduct. I did not speculate in the securities and credits of the company. I invested my means when I thought proper in the securities and credits. I entertain no feelings of animosity to W'm Johnston, president of the corporation mentioned. I have advised with counsel in relation to the case, not as to preparation of interrogatories.

The portions of this question not answered by me are insulting, and I decline answering.

C. H. MANSON.

Sworn to before us this 9th March, 1871.

W'M K. BACHMAN, *Com.* [SEAL.]
F. W. McMASTER, *Com.* [SEAL.]

The answers of L. D. Childs, a witness sworn and examined on part of plaintiff.

The witness, being duly sworn, says—

To the 1st interrogatory: Yes; I have been acquainted with Carolina National Bank since June, 1868, and with the Atlantic, Tenn. & Ohio Railroad since 1860.

2nd. Yes; I was director from about April 1863; remained so until receiver was appointed in 1869.

128 3rd. I did not know that the bank owned these bonds until a short time before the receiver was appointed. I then found out that they owned $25,000 worth. I do not know what was paid for them.

4th. I do not know.

5th. These bonds were sold by R. M. Johnston to W'm Johnston for $1,500 cash, and $16,000 in a note signed by both W'm Johnston and Rufus M. Johnston, as I think. The directors refused to confirm this sale which had been made some time previous to the death of Rufus M. Johnston. These bonds were in May, 1870, returned to the receiver of the Exchange Bank.

6th. Yes. The Carolina National Bank bought $10,000 worth of

bonds, from numbers 221 to 230, both inclusive, and from 241 to 250, both inclusive.

7th. Numbers are stated in answer to previous question; number 242 is one of the number.

8th. Yes; I made enquiry respecting solvency of the Atlantic, Tennessee & Ohio Railroad Co. from the treasurer of that company, and also from H. W. Guion, of Charlotte, No. Ca. The information received satisfied me of the solvency of the company.

9th. I learned from the printed reports that the Atlantic, Tenn. & Ohio R'road Company was redeeming its bonds, but upon what terms, I not learn.

10. Yes.

11th. I do not think I know anything more of my own knowledge.

L. D. CHILDS.

Sworn to before us this 9th March, 1871.

W'M K. BACHMAN, *Com.* [SEAL.]
F. W. McMASTER, *Com.* [SEAL.]

129 The answer of L. D. Childs to the cross-interrogatories:

To the 1st interrogatory witness says: I have no recollection of hearing Col. Johnston, or any one else, say that the bonds were subject to being sealed to confederate currency.

2nd. I never had any conversation with Rufus Johnston on the subject of these bonds. After death of Rufus Johnston, I told Col. Johnston, after or just before the receiver was appointed, of the dissatisfaction of the board of directors, and advised him to return the bonds, I think. I do not think I was a director in the railroad at that time. I know nothing of the action of the North Carolina legislature, or its effect upon the bonds.

3rd. I did not buy the bonds in conjunction with Manson or Gulick; neither of them were interested with me. I bought $8,500 on my own account and $10,000 for the bank; paid par, coupons thrown in.

I know nothing of Manson's purchase of the bonds, except by what he told me. I do not know who furnished him funds; I consulted Manson, as treasurer of the road, as to the solvency of the road, and probably as to the value of the bonds. He did not ask me to co-operate in the purchase of the said bonds. He did not communicate to me in any way the action of the board of directors after I ceased to be a director.

4th. I learned from printed reports all that I know about redemption of the bonds. H. W. Guion told me that the coupons were paid at par after suit brought.

5th. No one but the Carolina National Bank is interested in the coupons now in suit.

L. D. CHILDS.

Sworn to before us this 9th March, 1871.

W'M K. BACHMAN, *Com's'r* [SEAL.]
F. W. McMASTER, *Com's'r* [SEAL.]

130 And at the next term of the said court, to wit: November term, 1871, on the 20th day of December of said year, a decree is filed and entered in this cause in the words and figures following, to wit:

131 In the circuit court of the United States for the district of North Carolina, sitting in equity. November term, 1871.

THE CAROLINA NATIONAL BANK OF COLUMBIA, South Carolina, Lysander D. Childs, & C. H. Manson, plaintiffs,
against
THE ATLANTIC, TENNESSEE & OHIO RAILROAD Company, in North Carolina, The Charlotte and South Carolina Railroad Company, Joseph H. Wilson, and Anderson Mitchell, defendants.

This cause coming on at this term to be heard & debated before the honorable George W. Brooks, judge of said court, sitting in equity, in the presence of counsel learned in the law, upon both sides, and upon debate of the matter, and hearing the answers of the defendants & the proofs taken in this cause read, and what was alleged by the counsel on both sides, the court doth declare that the bonds & coupons issued by The Atlantic, Tennessee & Ohio Railroad Company, in the pleadings mentioned, were not issued as payable in the paper currency of the late Confederate States, and are not subject to any deduction on that account, but that the same are payable in good & lawful money of the United States, and should have been discharged in such money
132 when payment was demanded of said railroad company; and that by such failure to pay, with notice thereof to the defendants Joseph H. Wilson and Anderson Mitchell, the said Wilson & Mitchell acquired the absolute title to the property in the deed in trust mentioned in the pleadings, & accepted by them; and that they now hold said property for the benefit of plaintiffs, and all others holding any of said bonds or coupons, and of right should have sold said property, pursuant to the provisions of said deed, and paid off the coupons, whether attached to or severed from said bonds, with interest on the same from their respective dates of maturity, and likewise have paid off the principal of all said bonds now outstanding, whether the same were due or not due in their tenor, if the fund were sufficient to discharge the same in full, & if not, then to divide the same pro rata amongst the holders thereof; and having failed to discharge said trust upon demand, may now be required to perform the same in this court. The court doth therefore think fit, and so order and decree, that it be referred to Mr. N. J. Riddick, the clerk of this court, to take an account of what is due to the plaintiffs upon the bonds of the defendant, the Atlantic, Tennessee and Ohio Railroad Company in North Carolina, and guaranteed by the Charlotte & South Carolina Railroad Company, held by them and all other persons holding the like bonds, and to compute the same as due and payable in the lawful money of the United States; and in like manner, to take an account of what is due to plaintiffs and others upon the coupons attached to or severed from
133 said bonds, and to compute interest on such bonds and coupons as carry interest, after the rate the same carry interest.

And the said clerk is to cause advertisement to be published in the Southern Home, a paper published in the city of Charlotte, & such other public papers as he shall see fit, for the holders of any of said bonds or coupons of the said Atlantic, Tennessee & Ohio Railroad Company in North Carolina to come in before him and prove their bonds or coupons, and he is to fix a peremptory day for that purpose, and in de-

fault of their coming in to prove their debts within thirty days of the time so appointed, any & all so in default are to be excluded the benefit of this decree; but the parties so coming in to prove their bonds or coupons not parties to this suit are, before they are to be admitted creditors, to contribute to plaintiffs their portion of the expense of this suit, to be settled by the clerk. It is also decreed that defendants pay to plaintiffs their costs in this cause, to be taxed by the clerk, and that said clerk made his report touching the same with all convenient speed, and if, in taking said account, any special matter shall arise, the said clerk is at liberty to state the same to the court, and any of the parties are to be at liberty to apply to the court as occasion shall require.

And the court doth further order and decree that upon the defendant The Atlantic, Tennessee & Ohio Railroad Company in North Carolina paying unto the plaintiffs and all others in like interest what shall be reported by the clerk as due to them & each of them, for principal, interest, & costs as aforesaid, within thirty days after the said clerk shall have made his report & notified the defendants thereof, that then the defendants, Joseph H. Wilson and Anderson Mitchell, shall release and reconvey to said Atlantic, Tennessee & Ohio Railroad Company
134 in North Carolina all the property and estate which, as trustees, they acquired under & by virtue of the deed in trust in the pleadings mentioned, free and clear of all incumbrances done by them or any claiming by, from, or under them. But in default of said defendants paying unto the said plaintiffs & all others in like interest who shall come in and contribute to the plaintiffs' expenses in this suit, all such principal, money, interest, & costs as aforesaid, by the time aforesaid, it is ordered & decreed that the said defendants, Joseph H. Wilson and Anderson Mitchell, shall, as trustees for & in behalf of the plaintiffs & all others in like interest coming in as aforesaid, advertise the property and estate in and by said deed in trust conveyed to them, for sixty days & as prescribed in said deed, & thereafter shall sell the property & estate to the highest bidder for good & lawful money of the United States; and after such sale shall be reported to & confirmed by this court, then title shall be made by them to the purchaser, and the proceeds of such sale shall be applied, after discharging the expenses of executing said trust, to the payment in full of all sums reported by the clerk to be due to the plaintiffs and all others coming in as aforesaid, if the said fund shall be sufficient for that purpose: but if the same shall be insufficient, that then the same shall be distributed pro rata between the parties, according to a scale to be prepared by the clerk. And if, upon the payment of said principal, interest, & costs, by the said trustees, which may be reported as due to plaintiffs & all others coming in as aforesaid, there shall remain a surplus, the same shall be paid by said trustees to the said Atlantic, Tennessee & Ohio Railroad Company in North Carolina.

135 And it is further ordered and decreed that the defendant, the Atlantic, Tennessee & Ohio Railroad Company in North Carolina, shall deliver possession of its railway franchise and all other the property & estate in its said deed in trust mentioned, to the said Joseph H. Wilson and Anderson Mitchell, whenever thereto required by them, at any time prior to the payment of its bonds and coupons, with the interest thereon, as hereinbefore declared & decreed. And the said trustees, as to their action, as to the sale aforesaid, shall make report with all convenient speed, and state any special matter that may arise, and any of the parties are at liberty to apply as occasion shall require.

And all other matters are reserved for the further consideration & direction of this court.

G. W. BROOKS,
Dist. Judge.

From this decree the defendants pray an appeal to the Supreme Court of the United States, which is allowed; and on the 12th day of January, 1872, they file in the office of said court the following bonds, to wit:

136 Know all men by these presents that we, "The Atlantic, Tennessee and Ohio Railroad Company," R. F. Simonton, R. Y. McAden, and R. M. Oates, are held and firmly bound unto The Carolina National Bank of Columbia, South Carolina, Lysander D. Childs, and C. H. Manson, in the full and just sum of fifty thousand dollars to be paid to them, the said The Carolin' National Bank of Columbia, South Carolina, Lysander D. Childs, and C. H. Manson, their certain attorneys, executors, administrators, and assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 2d day of January, A. D. 1872.

Whereas lately, at a term of the circuit court of the United States, in and for the district of North Carolina, in a suit depending in said court, between the said The Carolina National Bank of Columbia, South Carolina, Lysander D. Childs, and C. H. Manson, plaintiffs, against the said The Atlantic, Tennessee and Ohio Railroad Company, Joseph H. Wilson, and Anderson Mitchell, defendants, a decree was made and entered against the said The Atlantic, Tennessee and Ohio Railroad Company; and the said last-mentioned parties having, at said last-mentioned term of said court, at the time of the making and entering said decree, claimed

137 an appeal from the said decree and judgment of said court, to the Supreme Court of the United States, to be holden at Washington, the first Monday of December next; and such appeal so prayed was allowed by the said court:

Now the condition of the above obligation is such, that if the said The Atlantic, Tennessee and Ohio Railroad Company, shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their appeal good, then the above obligation to be void, else to remain in full force and virtue.

[L. S.] R. F. SIMONTON, [SEAL.]
Pres't A., T. & Ohio R. R. Co'y.
R. F. SIMONTON. [SEAL.]
R. Y. McADEN. [SEAL.]
R. M. OATES. [SEAL.]

Signed, sealed, & delivered in presence of—
P. W. CRUTCHFIELD, for R. F. Simonton.
M. L. WRISTON.

Approved by—

Examined & approved.

J. W. BROOKS,
Dist. Judge.

138 UNITED STATES OF AMERICA,
District of North Carolina:

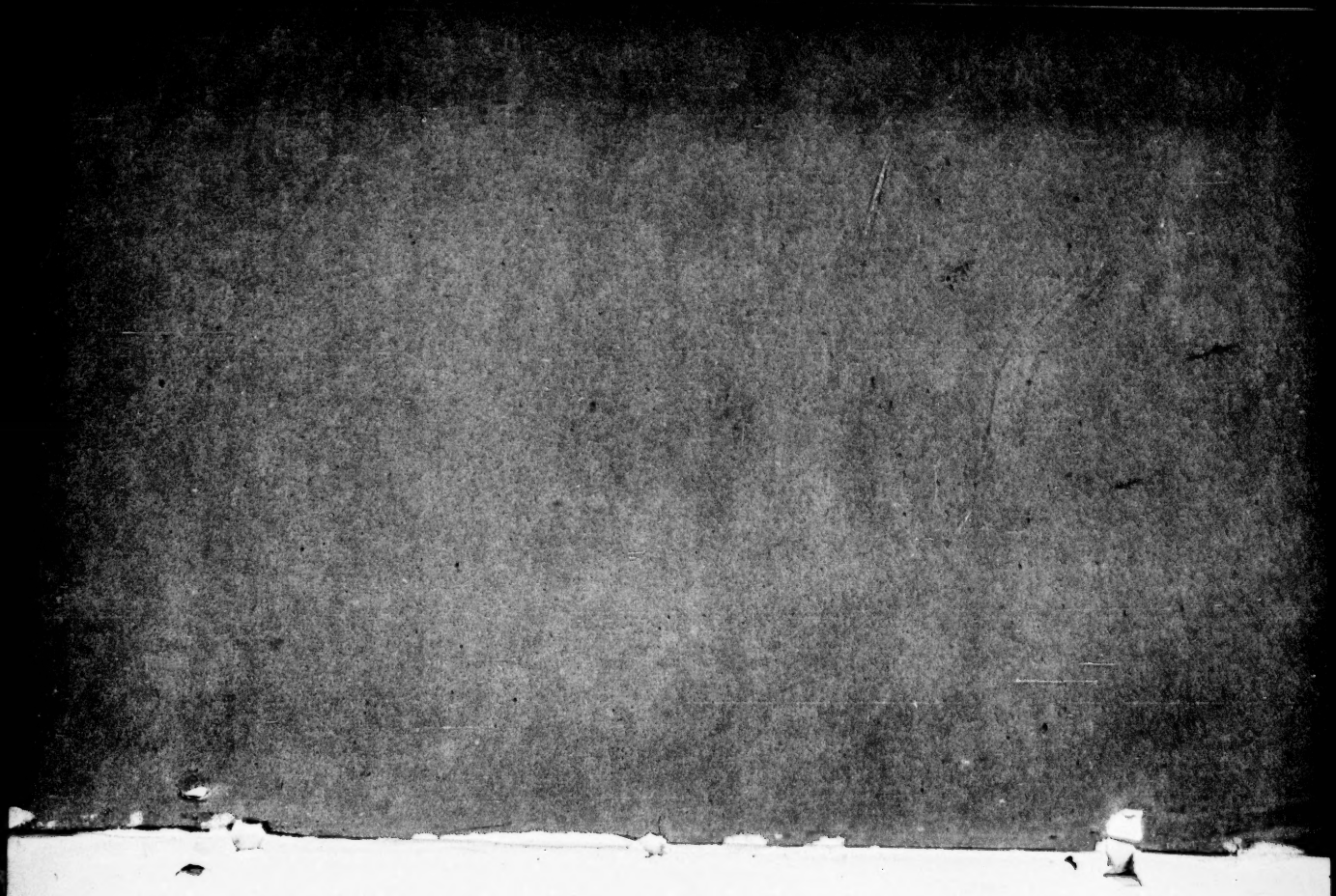
Circuit court, fourth circuit.

I, N. J. Riddick, clerk of the said court, do hereby certify the above and foregoing to be a true exemplification of the record of the cause of The Carolina National Bank of Columbia, South Carolina, Lysander D. Childs, and C. H. Manson, complainants, and The Atlantic, Tennessee & Ohio Railroad Company in North Carolina, The Charlotte & South Carolina Railroad Company, Joseph H. Wilson, and Anderson Mitchell, defendants, containing the original bill; the subpœnas issued in the cause; the answers of the said defendants; the testimony taken and filed; the exhibits filed by the complainants; the exhibits filed by the defendants; the interlocutory orders, and the final decree in the cause; together with the bonds for damages and costs filed by the said defendants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Raleigh, the 7th day of November, A. D. 1872.

[SEAL.] N. J. RIDDICK, *Clerk.*

(Indorsement on cover:) No. 263. The Atlantic, Tennessee & Ohio Railroad Company, The Charlotte & South Carolina Railroad Company, Joseph H. Wilson, & Anderson Mitchell, appellants, vs. The Carolina National Bank of Columbia, South Carolina, L. D. Childs, and C. H. Manson. N. Carolina C. C. U. S. Filed 23 November, 1872.



Supreme Court of the United States.

THE ATLANTIC, TENNESSEE, AND OHIO RAILROAD COMPANY, THE CHARLOTTE AND SOUTH CAROLINA RAILROAD COMPANY, JOSEPH WILSON, AND ANDERSON MITCHELL, Appellants,

vs.

THE CAROLINA NATIONAL BANK OF COLUMBIA, SOUTH CAROLINA, L. D. CHILDS, AND C. H. MANSON.

No. 263.

APPELLANTS' BRIEF.

I. *Statement.*

The Atlantic, Tennessee, and Ohio Railroad Company, a company chartered by the State of North Carolina, issued, in the early part of the year 1862, certain bonds to the amount of $151,000, secured by a first mortgage on the property of said road, which bonds were further secured by the guaranty of the Charlotte and South Carolina Railroad Company. These bonds were coupon bonds, the coupons being for six per cent. interest, and payable semi-annually.

The bonds and coupons, and the guaranty thereof, are set forth in the Transcript, pp. 2, 3. The bonds and coupons simply promise to pay —— "dollars," without specifying in what currency.

The bonds were secured by a deed of trust of the roadway, franchises, &c., of the Atlantic, Tennessee, and Ohio Rail-

road Company, executed to Joseph H. Wilson and Anderson Mitchell, two of the appellants, as trustees. The deed of trust is set forth at page 7 of the Transcript.

The bonds and coupons, the subject of this suit, being parcel of said $151,000, and amounting to $25,000 in bonds, (besides coupons,) and maturing in 1872 and 1873, were transferred by the President of the said two railroads, on the 17th of May, 1862, to the Exchange Bank of Columbia, South Carolina, for Confederate currency, at about 91½ cents on the dollar, and payment therefor received in such currency. The plaintiffs below (the appellees here) purchased the said bonds from the said Exchange Bank in 1870.

The plaintiffs below, the holders of said bonds, demanded payment of the bonds and coupons in the legal currency of the United States. The obligor and guarantor of said bonds refused to pay except the said holders would receive payment on the theory that they were solvable in Confederate currency. The holders, on the contrary, insisted that the bonds and coupons were payable in legal currency of the United States. The plaintiffs below then, as such holders, filed their bill against the two railroad companies and the trustees under the deed of trust, to compel the execution of the trusts of said deed by a sale of the property embraced in said deed.

The first question in the case is, whether the bonds and coupons were solvable in Confederate currency or the legal currency of the United States. The court below held that the bonds and coupons in question were not solvable in Confederate currency, but were solvable only in the lawful currency of the United States.

The second question in the case is, assuming, as the plaintiffs below did, that the bonds and coupons in question were solvable only in the lawful currency of the United States, whether the said bonds and coupons were not void for usury.

The third question is, whether the authority given by the charter of the Atlantic, Tennessee, and Ohio Railroad Company, to "borrow" money, and mortgage its fran-

chise to secure the payment thereof, authorized it to borrow Confederate currency. This authority is denied on behalf of the appellants, and for want of this authority it is alleged on their behalf that the bonds and coupons are void.

The fourth question is, whether the proof of the plaintiffs below, that the bonds were redeemed by the company, and no authority shown for their reissue, does not bar the plaintiffs from any recovery on said bonds.

The plaintiffs below allege in their bill, *inter alia*,

"That, in the early part of 1862, the more effectually to prosecute and complete its work, the said company, (the Atlantic, Tennessee, and Ohio Railroad Company,) in a regular way, and with all proper authority so to do, issued its coupon bonds in sums of five hundred dollars each, with coupons attached in the sum of fifteen dollars each, for the semi-annual interest, payable on the first days of May and November, in the years ensuing the date thereof, until the maturity of such bonds." (Transcript, sec. 4, p. 2.)

The deed of trust provides, *inter alia*,

That "in case the said party of the first part shall fail to pay the principal, or any part thereof, or *any* of the interest accruing on said bonds, * * the said party of the second part (the trustees) shall proceed to sell the property and estate hereby conveyed, or so much as may be necessary, * * be sold at public auction for *ready money*, in the town of Charlotte, in the State of North Carolina, and out of the proceeds of such sale the parties of the second part shall pay, first, the costs and expenses of sale." (Transcript, secs. 7 and 8, p. 3.)

The plaintiffs below allege that they are the *bona fide* holders of the bonds in suit for value paid, and without notice of any exception thereto; and they hold, respectively, fourteen and fifteen coupons overdue at institution of this suit. (Transcript, sec. 11, p. 4.)

The bill further alleges that it was not until after the plaintiffs purchased the bonds that the defendants took the ground that the bonds were payable in Confederate cur-

rency; but, on the contrary, large numbers of said bonds and coupons were redeemed by the company as if payable in Federal values, and so published in reports of stockholders' meetings, and that officers of the company have, as owners of said bonds, been paid for them without any scale for Confederate values, and that the company's officers have announced to divers persons, to induce them to take said bonds, that they were not payable in Confederate values, but in actual dollars. (Transcript, sec. 14, p. 6.)

The railroad companies, in their answer, state that the bonds and coupons in suit were sold to the Exchange Bank of Columbia, South Carolina, on the 27th of May, 1862. That said bonds were sold for Confederate currency, and such currency received in payment for them at the rate of $92\frac{7}{8}$ cents on the dollar. That Confederate currency was then at a discount of 1.80 for one dollar in gold. That the plaintiffs below purchased the bonds in suit from the receiver of the Exchange Bank in May, 1870. "That the purchase (of the bonds in suit) was made by them (the plaintiffs below) on *speculation and at large discount, and they had notice that said bonds would not be paid without being scaled, on account of the depreciaton in Confederate money.* (Transcript, secs. 30, 31, p. 12.)

Further answering, defendants state that at the time said bonds were negotiated, it was believed by its officers that said bonds were good securities, and, as is believed, was so declared by them; but after July, 1863, no declarations were made by its officers that said securities were regarded otherwise than of Confederate value; that some of the officers did own some of said bonds, which were exchanged for the bonds of the defendant, the Charlotte and South Carolina Railroad Company, as hereinbefore stated; that the books of the defendant, the A. T. & O. R. R. Co., showed a general statement of its liabilities and assets. When any of its liabilities were paid, credit was given for the nominal amount of the debt discharged, while its treasurer took credit for the actual sum disbursed. (Transcript, sec. 32, p. 13.)

The defendants, Wilson and Mitchell, trustees under the deed of trust, in their answer admit the issuing of the bonds in question and the execution of the deed of trust, and state that they have no knowledge of any statement of the president or other officers of the railroad company that the bonds "were not Confederate paper, but payable in lawful money; nor have they any personal knowledge of the officers of said company owning said bonds, and having the same redeemed without any deduction on account of Confederate values. That they refer to and adopt the answer as their co-defendants, as containing all the information they have on these various matters, which information respondents believe to be true." (Transcript, sec. 35, p. 14.)

The evidence, so far as deemed material to the points raised, is as follows:

Evidence for plaintiffs below.

S. B. Alexander states that he received some of the bonds in question from the president of the Atlantic, Tennessee, and Ohio Railroad, in settlement with him of private debt; that the president assured him "that they were worth more than their face in good money; and that he would put nothing of a Confederate value on me." (Transcript, sec. 59, p. 25.)

M. L. Wreston, treasurer of the Atlantic, Tennessee, and Ohio Railroad Company in 1862, states that the books (of the company) show that "in May, 1869, eighty-seven bonds of five hundred dollars each were redeemed, including all the bonds in controversy (in this suit) except No. 90, and also show that, at the same time, coupons amounting to fifteen thousand one hundred and twenty dollars to have been redeemed." (Transcript, sec. 65, p. 27.)

"The books show that the bonds were redeemed at par, and the coupons are included in the $15,120 heretofore mentioned." (*Ibid.*)

Statement of liabilities of the Atlantic, Tennessee, and Ohio Railroad Company, at the meeting of the stockholders, January 19, 1870—Report of the President.

Bonds of this company—

Amount of original issue	$151,000 00
Redeemed to date	118,500 00
Leaving balance outstanding	$32,500 00

(Transcript, sec. 70, p. 29.)

Treasurer's report at same meeting.

To C. and S. C. R. R. Co., for bonds A. T. and O. R. R.	$52,500 00
To C. C. and A. R. R. Co., for bonds A. T. and O. R. R.	62,000 00

Statement referred to in deposition of M. L. Wreston. Bonds numbered from 201 to 250 (bonds in suit) redeemed for $25,000, par value. (Transcript, sec 76, p. 33.)

Proceedings of a meeting of the stockholders of Atlantic, Tennessee, and Ohio Railroad, July 20, 1870.

The committee appointed to report "as to the manner the assets of the company have been managed and disposed of," say, after referring to the capital of the company: "This, together with $151,000 of bonds bearing six per cent. interest, indorsed by the Charlotte and South Carolina Railroad Company, constituted the entire available means of your company." (Transcript, sec. 80, p. 35.)

Committee further state $93,500 of the bonds of the company redeemed, and $34,845 coupons. (Transcript, sec. 83, p. 35.)

Statement by treasurer of receipts and expenditures of Atlantic, Tennessee, and Ohio Railroad Company has the following item:

Profit on purchase of bonds and coupons	$3,835 69

(Transcript, sec. 86, p. 37.)

Further, under head of expenditures, is found—

Bonds of this company redeemed	$93,500 00
Coupons of this company redeemed	34,845 00

(Transcript, sec. 86, p. 37.)

Further, under head of liabilities—

Bonds of the company—

Amount outstanding, including accrued interest on same to date	89,906 00

C. V. Baldwin, a director in Exchange Bank, states that Colonel Johnston did inform him that the bonds in question were solvable in Confederate currency. (Answer to 1st cross-interrogatory, Transcript, sec. 122, p. 52. See cross-interrogatory, sec. 113, p. 48.)

C. H. Manson, one of defendants, examined as witness, states the bonds in suit were redeemed "by the Atlantic, Tennessee, and Ohio Railroad at par, at Federal currency value," in 1869. (Transcript, sec. 125, p. 54.) Said bonds afterwards reissued by order of the president. (*Ibid.*) That about May, 1870, the president decided the bonds subject to Confederate scale. That view not entertained by any one connected with the company during four years after the war." (Transcript, sec. 126, p. 54.)

EVIDENCE FOR DEFENDANTS BELOW.

William Johnson was president of the Atlantic, Tennessee, and Ohio Railroad in 1862. The bonds in suit sold by him, as president of the company, 17th of May, 1862, to the Exchange Bank of Columbia, South Carolina, for Confederate currency at 91½ cents on the dollar, and payment received in said currency. In 1869 advised the directors of the Exchange Bank that the bonds in suit were subject to the Confederate scale. So informed Childs and Munson, two of the plaintiffs below.

II. *Assignment of errors in the decree.*

The court erred in holding that the bonds and coupons in suit were payable in the legal currency of the United

States, whereas the court at the utmost should have held they were payable in Confederate currency, according to its value at the time of the execution of the bonds, to wit, May 17, 1862.

2. That upon the assumption as made in the decree below, that the bonds and coupons in suit were solvable only in the lawful currency of the United States, the court should have held that said bonds and coupons were void for usury.

3. That the bonds and coupons in suit, and the deed of trust to secure the same, having been executed under a special authority granted in the charter of the Atlantic, Tennessee, and Ohio Railroad Company to "borrow money," the bonds and coupons in suit are *ultra vires*, no "money" having been borrowed, only Confederate currency, which was an illegal currency according to the laws of the United States.

4. The complainants below having shown by their own evidence that the bonds and coupons in suit had been redeemed, and this fact appearing to have been known to the complainants before they became the holders of the bonds and coupons, and no authority being shown for the subsequent issue of the bonds and coupons in suit, the complainants proved themselves out of court, and the decree should have been for the defendants below.

Argument.

1. The court erred in holding that the bonds and coupons in suit were payable in legal currency of the United States, but should at the utmost have held that they were payable in Confederate currency, according to its value in May, 1862.

It is submitted that obligations simply to pay "dollars" during the war, made within the Confederate States, should be taken to intend Confederate currency for the following reasons:

(*a*) It was the only currency in general use.

Taxes were paid in it.

Salaries paid in it.

Debts paid in it.
Army paid in it.
Trust funds invested in it.
The banks received and paid it out universally.

"For four years and more Confederate notes were the only currency of the country. Contracts during that period were predicated on that currency."

Pharis *v.* Dice, 21 Grattan R., (Va.,) p. 309.

Confederate currency during the war "the only currency the banks were then receiving and paying out."

Helb *v.* Peyton, 21 Grattan's R., (Va.,) p. 395.

"In the abnormal condition of the currency, the presumption of the common law, as to promise to pay" dollars was contrary to the fact.

Walker *v.* Pierce, 21 Grattan, 726.

It (land) was sold for Confederate money; and could only have been sold for that kind of money, it being the only currency of the country."

Hale *v.* Wilkinson, 21 Grattan's R., (Va.,) p. 88.

The form of almost every contract to pay Confederate money was to pay so many "dollars" generally.

Dearing's Admr. *v.* Rucker, 18 Grattan, p. 439.

"The terms intended to express monetary values were, according to the common understanding, assumed to relate to the notes of the Confederacy then in circulation."

Neely *v.* McFadden, 2 Richardson L. R., (New Series,) S. C., p. 174.

C. J. Chase, in delivering the opinion of this court in Thorington *v.* Smith, (8 Wallace, p. 13,) says: "It must be remembered that the whole condition of things in the insurgent States was matter of fact rather than matter of law, and as matter of fact these notes (Confederate currency) were forced into circulation as dollars, if not directly by the legislature, yet indirectly and quite as effectually by

the acts of the insurgent government. * * *They were the only measure of value which the people had*, and their use was a matter of almost absolute necessity. *In the light of these facts, it seems hardly less than absurd to say that these dollars must be regarded as identical in kind and value with the dollars which constitute the money of the United States.* We cannot shut our eyes to the fact that they were essentially different in both respects."

In this connection, attention is called to the ordinance of the convention of North Carolina of October, 1865, which establishes, as a presumption of law, that contracts to pay "dollars," made during the war, are presumed to be payable in Confederate currency, subject to evidence of a different intent.

Laws of North Carolina for 1866, c. 39, p. 98.

Valuation by statute of North Carolina, as value of Confederate currency for month of May, 1862.

Ibid. for 1866, ch. 38, p. 97.

Here it is proper to call attention to the fact that the precise question raised in this case, as to the meaning of the term "dollars" in the bonds and coupons in suit, has been raised and decided on certain of the bonds and coupons of the identical issue of the bonds and coupons in this case, by the Supreme Court of North Carolina, in the case of Alexander *v.* The Atlantic, Tennessee, and Ohio R. R. Co., (67 N. C. R., p. 198.)

The Supreme Court of North Carolina, in the case cited, says:

"In view of the history of the time when these bonds were issued, of which we take notice, it is rather to be implied, if, indeed, it be not taken as certain, that the bonds, although issued at par in name, were really issued at very great discount. Especially is this to be taken to be so, inasmuch as the plaintiff has not shown for what these bonds were issued, or what consideration was actually paid for them. But he has shown nothing to relieve the case from the presumption that the bonds are solvable in money of

the value of Confederate currency at the time they were issued." (*Ibid.*, p. 201.)

The court further holds, that these bonds come within the provision of the ordinance of 1865, and are "presumed to be solvable in money of the value of the Confederate currency." (*Ibid.*, p. 198.)

In regard to the presumption established by the ordinance of the State of North Carolina, it may perhaps be objected—

That it is unconstitutional; or—

That it is not of authority in the courts of the United States in equity causes.

In regard to the objection of unconstitutionality, it is true no State can pass any law "impairing the obligation of contracts." But it is submitted the ordinance in question, in establishing a presumption of law as a rule of evidence in regard to a certain class of contracts, does not violate the obligation of any contract. It simply establishes a rule of evidence, by which the proper interpretation of contracts may take place. It shifts the onus of proof from the party giving the obligation to the party to whom it is given.

As regards the objection that it is not applicable in equity causes, it is not well founded.

It is admitted that the equity jurisdiction of the Federal courts is not subject to regulation by State laws. The meaning of this rule is, that the form of the remedies administered in equity courts cannot be regulated by State laws. The same system of remedy by the chancery jurisdiction must exist in the Federal courts in every State. But outside of this principle, the Federal courts, in exercising their chancery jurisdiction, regard the laws of the States to the same extent, and on the same principle, that in Great Britain the chancery courts regard the law of the land. So a State law may create a right which a Federal court in equity may enforce.

It is a familiar general though not universal rule, that equity follows the law.

1 Story's Equity, sec. 64, pp. 71, 75.

The rules of evidence are the same in courts of equity as in courts of law.

Morrison's Ex'r *v.* Hart, 2 Bibb, 5.
Dwight *v.* Pomeroy, 17 Mass., 303.
Story's Equity, sec. 1527, p. 742.

It is assumed, then, from the above considerations and authorities, that the above presumption of law established by the ordinance of the State of North Carolina, as to the term "dollars" in contracts made in North Carolina during the war, is to have effect in the present case.

Claiming the full benefit of this presumption of law, we proceed to consider the case from the facts peculiar to the transaction.

(*a*) The Exchange Bank gave Confederate currency for the bonds in suit at 91½ cents on the dollar. (Transcript, sec. 98, p. 42.) The Atlantic, Tennessee, and Ohio Railroad Company transferred its obligation to pay so many "dollars" for $91 50 in Confederate currency.

The natural conclusion on this state of facts is, that the "dollars" the company undertook to pay were the same kind of dollars it received. Confederate "dollars" were received as "dollars." Confederate "dollars," it would seem, were the "dollars" to be returned. Nothing can be more improbable than that a solvent corporation, as this is shown to be, (Deposition of C. H. Manson, Trans., sec. 125, p. 24,) should, in May, 1862, borrow Confederate money, when, as appears, one dollar of lawful money was equal to $1 87 of Confederate currency, (Transcript, sec. 40, p. 16;) and the Confederate currency falling in value every month, (Transcript, pp. 16, 17;) and promise to pay lawful money for the same, and receive only $91 50 on the $100 of promises to pay lawful money.

The fact that the company received Confederate currency implies, as we conceive, in the strongest terms, that it was to repay the same kind of currency; and this presumption is fortified by the fact of exchanging the bonds for less than par.

b. It is to be noted the coupons of the company's bonds were payable at the end of every six months.

It is not pretended that lawful money was demanded for the early accruing coupons. On the contrary the early accruing coupons must have been paid in Confederate currency, because the plaintiffs claim that only fifteen past due coupons on their bonds were unpaid when their bill was filed, April 28, 1871. (Transcript, secs. 11, 12, 13, p. 5.) The issue of the bonds was dated May 1, 1862. (Transcript, sec. 30, p. 12.) From that date the interest, as evidenced by the coupons, began to run. From that date to the filing of the bill was within one month of nine years. Seventeen coupons had become due then when the bill was filed. We consider ourselves authorized to presume, having regard to the fact that Confederate currency was the sole currency in circulation in the Confederate States in 1862 and 1863, and in the absence of evidence to the contrary, that the first two coupons on plaintiffs' bonds were paid in Confederate currency. If these two first coupons had been paid in lawful currency, it was an important fact, which the plaintiffs below could have proved. Not having proved it, we assume, that the two first coupons were paid in Confederate currency.

This is a controlling fact. It shows a contemporaneous exposition of the meaning of the term "dollars" as used by the company. *Contemporanea expositio est optoma et fortissima in lege.*

It is to be noted the early accruing coupons were payable at the end of six and twelve months. It is clear it could not have been in the minds of either party that the lawful currency of the United States would be in circulation at the place of payment within six or twelve months. That the company would, under such circumstances, undertake to pay this kind of currency at such an early date is most improbable.

c. The bonds authorized to be issued by the company by resolution of the stockholders, the authority for the validity of the bonds on which the plaintiffs below rely, were to

bear interest at the rate of six per cent. (Transcript, sec. 21, p. 8.)

Now, it is impossible, under this limitation of the rate of interest to six per cent., that the parties receiving the bonds could suppose or the company could intend that bonds bearing six per cent. interest, negotiated at 91½ cents on the dollar in depreciated Confederate currency, could be solvable only in lawful currency. If so, then the bonds in question issued were paying nearly twelve per cent. interest at the date of their issue.

The plaintiffs below make the deed of trust for securing the bonds a part of their bill, in which it is stated the bonds were to bear six per cent. interest. To bear only six per cent. interest, where they were given, as these bonds were, for Confederate currency, they must necessarily have been given for Confederate currency at dollar for dollar of the bonds.

To make the bonds lawful bonds, within the authority conferred by the stockholders, they were to bear only six per cent. Assuming that the Exchange Bank, through whom the plaintiffs below claim, intended a lawful transaction, we are obliged to conclude that both parties meant that the bonds and coupons were solvable in Confederate currency. *Omnia præsumunter rite esse acta.*

On the assumption that the company and the Exchange Bank intended to make a lawful contract, we are bound to presume that the bonds and coupons were solvable in Confederate currency.

(*d*) The deed of trust provided that if any of the principal or interest was unpaid, the trustees should sell the property of the company for "*ready money*" in the town of Charlotte, North Carolina. (Transcript, sec. 23, p. 9.)

Under this provision the sale of the road might have been had in ninety days after the October coupons were due in 1862. The road was to be sold for "ready money."

Now, we ask what other "ready money" was then in circulation at Charlotte, North Carolina, except Confederate currency? To say that "ready money," at that time and

place, meant the lawful currency of the United States is out of the question. "Ready money" then and there could only mean Confederate currency.

Assuming, then, that the road could have been sold out for "ready money"—that is Confederate money—and the bonds paid with this "ready money," we submit we are authorized to conclude the bonds were solvable in Confederate currency.

(*e*) The trustees in their answer state:

"Nor have they any personal knowledge of any statement of the president or other officers of said company, that said bonds were not Confederate paper, but payable in lawful money." (Transcript, sec. 35, p. 14.)

We submit that this statement of the trustees is of great importance.

As matter of current history, we assume that the general business of the country where these bonds were issued, at the time of their issue, was carried on in Confederate currency. Such was undoubtedly the almost universal rule.

Under this condition of things, if the bonds in question were intended to mean not Confederate dollars, but lawful dollars of the United States, it is surely a most remarkable fact that the trustees knew nothing of it.

If the issue of the bonds was intended to be in the ordinary course of things then existing, an issue payable in Confederate currency, then it was unnecessary to make any explanation to the trustees. But if the bonds meant lawful currency of the United States, a thing then and there of the most extraordinary character, indeed unlawful *de facto*, it was extraordinary that this anomalous procedure should not have been made known to the trustees, the legal representatives of the bondholders.

This ignorance of the trustees as to the alleged fact that the bonds and coupons were only payable in lawful currency of the United States, is a pregnant fact, tending to the conclusion that the bonds and coupons were payable in Confederate currency.

(*f*) The trust deed recites that the company had deter-

mined to borrow "two hundred and fifty thousand dollars," and to execute bonds therefor "in the sum of five hundred dollars each." (Transcript, sec. 19, p. 7.)

No one can doubt, from the light of the attending circumstances, that the company intended to borrow the "two hundred and fifty thousand dollars" in Confederate currency. Such being the case, what reason is there for supposing the "bonds for five hundred dollars each" meant a different currency? These two expressions occur in the same sentence, and, according to all principles of rational construction, they must be taken to mean the same thing.

If we are right in that conclusion, it is clear the bonds in suit are payable in Confederate currency.

2. If held that the bonds in suit were intended to be payable in lawful currency of the United States, then they are void for usury, and the court below should have so held.

That the transaction by which the Exchange Bank became the owner of the bonds in suit was a loan of money, is plain.

"On authority, and on general principles, it would seem that the first owner of the note must pay its full amount, or else, though he may say he purchased it of the maker, in fact he only lends on his (the maker's) security, and that usuriously. * * * And then it would follow, that if the maker, a railroad corporation, issues bonds, and gives them to a broker to raise money on them for the use of the corporation, and the broker sells them for less than their face, such a transaction would be a usurious loan."

3 Parsons on Contracts, (5th ed.,) pp. 144, 145.

Sale of bonds by the obligor is a borrowing.'

Rogers *v.* Burlington, 3 Wallace, 667.

Russell *v.* City of Jeffersonville, 24 How., 289.

Town of Danville *v.* Sutherlin, 20 Grattan's R., (Va.,) 579, 580.

Harick *v.* Jones, 4 McCord, (S. C.,) 405.

Assuming that the bonds in question were issued for Confederate currency borrowed from the Exchange Bank, we submit the bonds were void for usury.

The bonds being payable in North Carolina, where the company was located, the question of usury is to be determined by the laws of North Carolina.

"The contract, as to its validity, nature, obligation, and interpretation, is to be governed by the law of the place of performance."

Story's Conflict of Laws, sec. 280.
Andrews *v.* Pond, 13 Peters, 65.

The statute of North Carolina as to usury is as follows:

"No person, upon any contract, shall, directly or indirectly, take for loan of any moneys, wares, merchandise, or commodities whatsoever, above the value of six dollars, by way of discount or interest, for the forbearance of one hundred dollars for one year, and so after that rate for a greater or lesser sum or for a longer or shorter time; and *all bonds, contracts, and assurances whatsoever, for the payment of any principal or money to be lent, to be performed upon, or for any usury, whereupon or whereby there shall be reserved or taken above the rate of six dollars on the one hundred, as aforesaid, shall be void.*"

Revised Code of North Carolina, (Moore & Biggs' Revision, published in 1855,) p. 597.

Usurious securities void in hands of an innocent party.
Collier *v.* Nevill, 2 Devereux, (N. C.,) 32.

If a person misconstrues the law of usury he must abide by his error. (*Ibid.*)

See also Thompson *v.* Nesbitt, 2 Richardson, (S. C.,) 74.

The plaintiffs below are, however, not innocent holders; they had full information of the circumstances under which the bonds were obtained by the Exchange Bank.

The town of Danville, in 1863, sold the bonds of the city (payable in lawful currency) for Confederate currency, and for a bond of $5,000, bearing six per cent. interest, and payable at the end of twenty years, the purchaser gave $11,050, Confederate money at the time being as ten for

one of gold, held to be usury in a learned opinion delivered by Staples, Judge, in which numerous authorities are cited.

Danville *v.* Sutherlin, 20 Grattan (Va.) R., 555.
See also City of Lynchburg *v.* Nowell *et al.*, 20 Grattan, (Va.,) 601.

3. The bonds in suit having been executed under the special authority granted in the charter of the Atlantic, Tennessee, and Ohio Railroad Company to "borrow money," the company was not authorized to borrow Confederate currency, and so the bonds are void.

It is clear that the company's power to issue bonds or do any other act arises out of its charter and is limited by it.

Head *v.* Providence Insurance Co., 2 Cranch, 169.
The Farmers' Loan and Trust Co. *v.* Carroll, 5 Barbour, 649.
New York Insurance Co. *v.* Ely, 5 Connecticut, 568.
Gould *v.* Town of Sterling, 23 New York R., 458.

The power to issue the bonds in suit is derived from the 19th section of the act of incorporation, as follows:

"SEC. 19. That said company may at any time increase its capital to a sum sufficient to complete said road and stock it with everything necessary to give it full operation and effect, either by opening books for new stock, or by selling such new stock, *or by borrowing money* on the credit of the company, and on the mortgage of its charter and works."

Act to incorporate Atlantic, Tennessee, and Ohio R. R. Co., (1855,) Laws of North Carolina for 1854–5, p. 248.

The point we submit on this branch of the case is that authority to "borrow money" did not authorize the borrowing of Confederate currency.

The term "money," as used in this act of incorporation, is to be taken as it was meant when that act was passed. It meant lawful money of the United States, that which

was a lawful currency within the contemplation of the laws of the United States.

This court, it is true, has enforced contracts made in Confederate currency. (Thorington *v.* Smith, 8 Wallace, p. 11.) This was done because the court considered it as a currency imposed on the community by irresistible force. But the court did not hold that it was "money," in the sense of the laws of the United States.

The question now raised for the court to determine is, whether the term "money," meaning necessarily lawful money or currency of the United States, embraces Confederate currency. If the term "money," used in 1855, is not so comprehensive, then the bonds in this case were issued without authority, and so are void. As to what is money, see

Griswold *v.* Hepburn, 2 Duvall's R., 29.
1 Black's Comm., 276.
Story's Constitution, sec. 1118.

4. It appearing from the evidence introduced by the plaintiffs that the bonds in suit have been redeemed by the company, the plaintiffs have proved themselves out of court, and shown that they have no right to recover said bonds under any aspect of the law.

Deposition of M. L. Wreston, witness introduced by plaintiffs below:

"The bonds have been entered on the books of the company as having been redeemed by the company in May, 1869. (See statement marked "A.") C. H. Manson was secretary and treasurer at the time, and I believe the entries to be in his hand-writing, he being one of the plaintiffs in the action. The books show that in May, 1869, eighty-seven bonds of five hundred dollars each were redeemed, including all the bonds in controversy, except No. 90, and also show that at the same time coupons amounting to fifteen thousand one hundred and twenty dollars to have been redeemed."

Transcript, secs. 65, 66, pp. 27, 28.

Deposition of C. H. Manson, one of the plaintiffs below, examined on behalf of plaintiffs:

5th. "The lot of bonds mentioned in my answer to 3d interrogatory (the bonds in suit in this case) * * * were redeemed from the Charlotte and South Carolina railroad by the Atlantic, Tennessee, and Ohio railroad."

Transcript, sec. 124, p. 54.

The bonds having thus, according to the evidence of the plaintiffs below, been redeemed, they were no longer of any legal force and effect; and it not being shown that their subsequent reissue was authorized by the stockholders, they are nullities in the hands of the plaintiffs below, who had full knowledge of their redemption.

WILLIAM W. BOYCE,
Counsel for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1873.

THE ATLANTIC, TENNESSEE, AND OHIO RAILROAD COMPANY, THE CHARLOTTE AND SOUTH CAROLINA RAILROAD COMPANY, JOSEPH WILSON AND ANDERSON MITCHELL, Appellants,

vs.

THE CAROLINA NATIONAL BANK OF COLUMBIA, SOUTH CAROLINA, S. D. CHILDS AND C. H. MANSON, Appellees.

No. 263

SUPPLEMENTAL BRIEF OF APPELLANTS.

That points may for the first time be raised here which passed *sub silentio* in the court below—

Every point which, from the record, goes to the very foundation of the action, may be raised at any time.

Palmer *v.* Lorillard, 16 John. R., per Kent C. J., 353.

"If counsel should for the first time raise a point here which might have been obviated had it been made in the court below, he ought not to be permitted to do so." * * But where a cause has been defended in a court below and comes here for review, and a point is made here which could not be obviated in the court below by proof or amendment, I am clearly of opinion that this court ought not to refuse cognizance of such point."

Per Spencer C. J. in Beerman *v.* Frost, 18 John. R., (N. Y.,) 559.

In confirmation, see James *v.* McKennon, 6 John. R., 543.

Lyon *v.* Tallmage, 14 John., 501.

2 Robinson Practice, p. 434.

"There is no rule of court or principle of law which prevents the complainants from assuming a ground in this court which was not suggested in the court below. A new ground of relief has been assumed in the argument here that was not made in the circuit court, which is, that although this court should be of opinion that a specific execution of the contract ought not to be decreed, still the complainants are entitled to a decree for the rents and profits."

Watts *v.* Waddle, 6 Peters, 402.

"Where, in an appellate court, a question is raised which passed *sub silentio* in such court below, but which did not appear from the record to have been waived, it will be considered."

Kerr *v.* Watts, 6 Wheat., p. 561.

"That the objection to the validity of this will to pass the lands in controversy to the respondents was not raised below, is highly probable, as we observe it is not noticed, much less relied on, in the answer; yet defendant was allowed to raise the point in supreme court, as the fact of the validity of the will was essential to be stated in the bill, and proved, if not admitted, in the answer.

Kerr *v.* Moore, 9 Wheat., 572.

W. W. Boyce,
Counsel for Appellants.

IN THE

Supreme Court of the United States.

THE ATLANTIC, TENNESSEE & OHIO RAILROAD COMPANY, in North Carolina,
THE CHARLOTTE & SOUTH CAROLINA RAILROAD COMPANY,
JOSEPH H. WILSON and ANDERSON MITCHEL,
Appellants,

VS.

THE CAROLINA NATIONAL BANK OF COLUMBIA, S. C.,
L. D. CHILDS and C. H. MANSON,
Appellees.

No. 263.

BRIEF FOR APPELLEES.

H. W. GUION, Counsel.

IN THE

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THE CAROLINA NATIONAL BANK OF COLUMBIA, S. C.,
L. D. CHILDS and C. H. MANSON,
Appellees.

No. 263.

Brief in Behalf of Appellees.

In the year 1862, The Atlantic, Tennessee & Ohio Railroad Company, in North Carolina, made its coupon bonds payable to the Charlotte & South Carolina Railroad Company, or bearer, and issued the same with the endorsement of the latter company, guaranteeing their payment. The Atlantic, Tennessee & Ohio Co. also conveyed all its estate and property to the appellants, Wilson and Mitchel as trustees, to sell, under certain contingencies, and apply the proceeds of sale to the payment of all outstanding bonds and accrued interest. The contingency having arisen, the appellees, being bondholders, filed this bill to compel said trustees to sell the property and estate conveyed to them and apply the proceeds to the extinguishment of the debt.

The reason assigned for not complying with appellees' demand, is that the parties differ as to the amount stipulated in said bonds to be paid: the appellees demanding payment for the full face value expressed in the bonds, in lawful currency, and the appellants insisting that by the "dollars" expressed, was only intended Confederate Treasury notes, and the amount should be reduced to its equivalent value in lawful currency or gold. The whole defence is placed upon the laws that have been made in North and South Carolina, since the late civil war; and the decision of this case rests upon their application and construction.

By a convention, assembled in North Carolina on the 2nd day of October, 1865, an ordinance was adopted bearing the title of "*An Ordinance declaring what laws and ordinances are in force, and for other purposes.*" In the 3rd section of which will be found, as follows:

"It shall be the duty of the General Assembly to provide a scale of depreciation of the Confederate currency from the time of its first issue to the end the war; and all executory contracts, solvable in money, whether under seal or not, made after the depreciation of said currency before the first day of May eighteen hundred and sixty-five and yet unfulfilled (except official Bonds and penal Bonds payable to the State) shall be deemed to have been made with the understanding, that they were solvable in money of the value of the said currency; it shall be competent for either of the parties to show by parol or other relevant testimony, what the understanding was in regard to the kind of currency in which the same are solvable; and in such case, the true understanding shall regulate the value of the contract: *Provided*, That in case the plaintiff in any suit upon such contracts, will make an affidavit that it was solvable in other currency than that above referred to, then such presumption shall cease, and it shall be presumed to be payable in such currency as shall be mentioned in the affidavit, subject to explanation by evidence as aforesaid."

Ratified in Convention Oct. 18, 1865.

The Legislature in the ensuing year passed two acts connected with the subject: The first is as follows; viz:

"*An Act relating to Debts contracted during the late War.*

WHEREAS, A great many debts, which were contracted during the war, are yet unsettled, said debts having been incurred for property bought at irregular and extravagagant prices, or for currency of a depreciated value: And whereas, the late State Convention made it obligatory on this General Assembly to provide a scale of depreciated currency for the settlement of these debts: And whereas this General Assembly finds great difficulty in fixing a scale which will secure justice to citizens of all sections of the State: And whereas, in the opinion of this General

Assembly, no scale which will do justice to all sections of the State can can be adopted, therefore

SECTION 1. Be it enacted, That in all Civil Actions, which may arise in Courts of Justice for debts contracted during the late war, in which the nature of the obligation is not set forth, nor the value of the property for which said debts were created is stated, it shall be admissible for either party to show on trial by affidavit or otherwise, what was the consideration of the contract, and the jury in making up their verdict shall take the same into consideration and determine the value of said contract in present currency, in the particular locality in which it is to be performed, and render their verdict accordingly.

Ratified, March 12th, 1866."

The second Act above referred to is as follows:

"An Act to establish a scale of depreciation of Confederate Currency.

WHEREAS, By an Ordinance of the Convention entitled "An Ordinance declaring what laws and ordinances are in force, and for other purposes," ratified the 18th of October, 1865, it is made the duty of the General Assembly to provide a scale of depreciation of the Confederate Currency from the time of its first issue to the end of the war; and it is further therein declared that "all executory contracts solvable in money, whether under seal or not, made after the depreciation of said currency before the first day of May, one thousand eight hundred and sixty-five, and yet unfulfilled (except official bonds and penal bonds payable to the State) shall be deemed to have been made with the understanding that they were solvable in money of the value of said currency, subject nevertheless, to evidence of a different intent of the parties to the contract; therefore,

SEC. 1. Be it enacted, &c. That the following scale of depreciation be and the same is hereby adopted and established as the measure of value of one gold dollar in Confederate currency for each month, and the fractional parts of the month of December, 1864 from the 1st day of November 1861, to the 1st day of May, 1865, to-wit:

Scale of Depreciation of Confederate Currency, the Gold Dollar being the Unit and Measure of Value from November 1st, 1861, to May 1st, 1861.

MONTHS.	1861	1862	1863	1864	1865
January	.....	$1.20	$3.00	$21.00	$50.00
February	.....	1.30	3.00	21.00	50.00
March	.....	1.50	4.00	23.00	60.00
April	.....	1.50	5.00	20.00	100.00
May	.....	1.50	5.50	19.00	.....
June	.....	1.50	6.50	18.00	.....
July	.....	1.50	9.00	21.00	.....
August	.....	1.50	14.00	23.00	.....
September	.....	2.00	14.00	25.00	.....
October	.....	2.00	14.00	26.00	.....
November	$1.10	2.50	15.00	30.00	.....
December	1.15	2.50	20.00	.....	.....
Dec'r 1st to 10th, inclusive	.....	.....	.....	35.00	.....
" 10th to 20th, "	.....	.....	.....	42.00	.....
" 20th to 30th, "	.....	.....	.....	49.00	.....

Ratified the 12th day of March, A. D, 1866.

Upon this ordinance and these statutes, as construed by the Supreme Court of North Carolina in Robeson *vs.* Brown, 63 N. C. R., 555, and Terrell *vs.* Walker, 66 N. C. R., 245, the appellants rest their whole defence. They insist that as the Bonds sued on, *bear date the 1st of May*, 1862, they must necessarily be deemed payable in Confederate Treasury Notes, and be scaled to an equivalent amount in lawful currency: and as they were sold in South Carolina, to the Exchange Bank, the amount of depreciation as fixed by the law of South Carolina as of 1st of May, 1862; viz: $1.87 should be adopted as the true standard, instead of the law of North Carolina, which fixes the rate at $1.50 to 1 on that day.

The appellees insist that the defence arising under such statutes, cannot avail the appellants for the reasons:

1st. That said ordinance and statutes are void, being contrary to the Constitution of the United States.

2d. That the bonds sued on are not within the meaning and intent of said statutes; and,

3d. That the facts proven by appellants repel any and every presumption, that said bonds were payable in Confederate Treasury Notes.

On the first head: "The law of a contract forms its obligation; and this obligation consists in the power and efficacy of the law which applies to, and enforces performance of the contract or the payment of an equivalent for non-performance." (Ogden & Sanders, 12 Wheat, 259.) The *expressed terms* of contracts are, in general, few and brief. Those *implied* are greater in number, more extended and found only in the law itself. Yet the implied are as necessary and important as those expressed.

The appellants intended to make and put in circulation *negotiable* instruments: and one of the indispensable requisites to negotiability is, that "they must be for the payment *of money and of money* only." (Chitty on Bill, 152.) Confederate Treasury Notes were never recognized as money, or even made legal tenders, in the payment of debts—to interpolate by construction—the word "*Confederate*" before Dollars in the bonds, would at once destroy their negotiability.

The word Dollars used in the bonds, is not attended with any ambiguity, and no court would be at a loss to instruct the jury, without proof to the contrary, that it meant the unit of value in the United States, and of the Confederate States which had adopted the same. "Payment is ordinarily to be made in *money or coin according to its true value and denomination*, and the holder is not bound to accept anything but such money or coin at its true and proper value." (Chitty on Bills ch. 9, 433.) Where the denomination used in the contract is that of a lawful currency, in use in the country where payable, the law presumes that the lawful currency was intended.

In Stevens *vs.* Smith, (4 Devereux, N. C., 292,) the promise was to pay 447.66 cents; the word "*Dollars*" being omitted. The court held that the word "*Dollars*" must be understood, as the note was made for the payment of money; and unless *otherwise distinctly expressed*, the currency of our country must be understood, and that of this country by the express enactment of Congress, (Act of April 2d, 1792) "*a dollar is the unit*—that all other coins are recognized as either multiples or fractional parts of the unit."

In the case before us, the word "*dollars*" is expressly used, and shall it have a different meaning than if it were omitted? Is not the unit of our country to be understood, equally as well as if the word were not written? Such is the law merchant, and commerce would be greatly embarrassed by a different rule. A note made in England for one hundred pounds would mean pounds *sterling;* but a like note made in America would mean one hundred pounds, American currency, which is one-fourth less. (Story on Prom. Notes §162.) A note in Boston for one hundred pounds payable in London would be construed to be for one hundred pounds sterling; whereas if a note were drawn for the same sum in London, payable in Boston, it would be for one hundred pounds of the lawful currency of Massachusetts, which is one quarter less in value. (Ibid §163).

All *negotiable* paper must be payable in coins, such as guineas, ducats, Louis d'ors doubloons, crowns, or dollars; or in the known currency of a country as pounds sterling, livres tournoises, francs, florins, &c.,

for, in all these cases the sum of money to be paid is fixed by the par of exchange, or the known denomination of the currency with reference to the par. (Chitty on Bills, p. 153.)

In 1809 it was enacted by the Legislature of North Carolina: "That hereafter the currency of the United States shall be recognized as the lawful currency of this State; and it shall and may be lawful for the records and all other papers and proceedings in this State to be kept in *dollars* and cents. (2 Potters Revisal, 1161.)

We think, therefore, the opinion may be safely expressed, that in May, 1862, when these bonds bear date, every court in the land, putting a construction upon these bonds, would without other proof have held that the obligors had bound themselves to pay to the bearer good and lawful dollars, of the United States or State of North Carolina. Perhaps the obligors would be heard to say, that there was a *latent ambiguity* in the use of the word, and other dollars, as of Mexico, Peru or Chili, were intended; and possibly they might have been permitted to plead even that Confederate Treasury notes were meant. But in any such case the plea and allegation must have been sustained by satisfactory proof on the part of the obligors. In Thorington *vs.* Smith, 8 Wall. 1, the Court held that evidence was admissible, but did not alter the rule of the common law, as to the party making the allegation and offering the proof. But now, by the ordinance and statutes of North Carolina, the tables are turned, and the situation of parties entirely changed. The new Rule substitutes Confederate Treasury notes for dollars—places the whole burden of proof upon the obligee's shoulders, and releases the obligor from all proof whatever. Such was not the law pertaining to these bonds when they were issued; such was not the contract between the obligors and the future holders. The acts are wholly retrospective, operating on contracts theretofore made, actually changing the contract as written and then interpreted by existing laws, converting negotiable into unnegotiable securities and impairing the right of the holder to sue in his own name (as Confederate paper was no money at all,) and shifting the whole burden of proof upon his shoulders, who before that was called upon to make no proof, as to his right. The construc-

tion of contracts, prior to these acts, was only for the Judiciary, and the Legislature grossly transcended its authority in thus usurping judicial powers, over all these contracts of every kind made during certain years. It is admitted that the Legislature may alter the rules of evidence, but not retroactively, so as to impair the obligation of the contract, by placing upon one of the parties burdens which he cannot bear, or obstacles he cannot remove. We therefore insist that the ordinance and statutes aforesaid are unconstitutional and void; and the burden still rests upon appellants to prove, as at the date of their bonds, that they were intended to be payable in Confederate treasury notes, and if the appellees have failed in proving the contrary, they are not to be prejudiced by any shortcomings of theirs on that point.

Second Point, That these bonds are not within the intent and meaning of the said ordinance and statutes.

With regard to the construction of statutes, the first point with the judge is, to discover if possible the true intention of the Legislature, and then make judicial decision conform to the spirit of the act. "Every statute ought to be expounded not according to the *letter*, but according to the meaning: *qui hæret in litera, hæret in cortice.* The enlarged interpretation of a law will penetrate the soul and spirit of a law, and reach the intent and meaning of a legislator."–(*Potters Dwarris*, 175.) "A thing which is in the *letter* of a statute is not within the statute, unless it be within the intention of the maker."—(*Ibidem*, 180.)

The ordinance and statutes now under consideration, evidently contemplate only the ordinary, every-day transactions between man and man, in limited spheres, and to which each party may testify by affidavit, and juries may do justice in different localities. They expressly relate to only two classes of cases: The one, *debts* incurred for the *purchase of property* at fictitious values, the actual value of which can be readily ascertained, and then form the standard for regulating the true debt; and the other, *debts* incurred and still due for some especial amount of Confederate money borrowed, the actual value of which in lawful money may

be ascertained by referring to the scaling table, at the date of the loan.

If these bonds fall within either class designated in the statutes, it must be the latter, as there is no pretence that they were issued for the purchase of any kind of property. But there is no allegation or pretence that they were issued to attest the loan of *any specific sum of money*; but as the obligors and obligee, who made them, in their joint answer say, "that said issue of bonds were dated as of the 1st of May, 1862, and *thereafter negotiated and sold, as purchasers therefor could be found.*" In plain words, they were not and are not simple evidences of debt, as ordinary bonds, but a *kind of property*, a *valuable article*, manufactured by the parties to be sold, for the most they would command in the markets of the world. After their preparation, they were as much marketable property as wagons, cotton or other articles made or kept for sale. In the world at large, this class of securities is viewed as a species of *stock*, redeemable at a future day, with dividends certainly payable at fixed intervals. They are based upon anticipated gains or profits in the *long future*, to be sold for their *present worth*. They are not simply bonds or evidences of debt, as known at common law, but a security of modern invention, suited to the necessities and usages of the mercantile and commercial world. (Mercer County vs. Hacket, 1 Wal. 95.) These bonds now in suit, payable to bearer, with coupons attached, were intended to be negotiable, and take rank with bank bills, with State and Government bonds, the Consols and Exchequer bills of England, the bonds of the King of Prussia, and the Government of Naples.

Morris Canal & Banking Co. vs. Fisher, 1 Stockton, Chancery 667.

Delafield vs. State of Illinois, 2 Hill, 159.

Gorgier vs. Mieville, 3 Barm. & Cr. 45.

Wookey vs. Pole, 4 Barm. & Ald. 1.

Lane vs. Smith, 7 Bing, 284.

White vs. Vermont and Mass. R. Co., 21 How. 577.

Moran vs. Commissioners of Miami Co., 2 Bl. 731.

Thompson vs. Lee Co., 3 Wall. 331.

Murray vs. Lardner, 2 Wall. 118.

These corporations having impressed upon these bonds

all the insignia of these world-wide securities and obtained for them all the advantages pertaining to their exalted associates, would now, in the day of payment, depress them to the very lowest depths of the lowest Confederate paper. Whilst claiming for them the benefit of the North Carolina scaling law, of one-and-a-half for one, they yet demand the still lower scale of 1.87 for one as provided in the law of South Carolina. Once they abounded in merit and excellencies, now they are full of frailties and deficiences. Then they had the rosy hue upon the cheek, now there is certainly a worm in the bud.

If the scale laws are applied to these bonds, results are attained which show that they could not have been in the contemplation of the Legislature.

Parol testimony must be heard as to all the circumstances of the transaction. The date of the bonds must be disregarded, and the *actual dates* of the sales to different persons be ascertained with the scale values of the money at these different times. The coupons paid will be found greatly to exceed the lawful rate of interest upon the sums actually advanced when reduced by the scale laws. By the scale table, different sums of money will be found due on each bond to the various bondholders. Yet such was not the obligation of the contract when the bonds were sold. The mortgage executed when the bonds were issued recites: "it being the object, intent and meaning of the said party of the first part to place all the bondholders intended to be hereby secured upon a basis of equality;" and it further recites, that after a scale, "if the proceeds of such sale shall be sufficient, to pay the same in full; but if such sale shall not be sufficient to pay all the said bonds whether due or not due, with their accrued interest, then and in that case, the proceeds of sale shall be distributed among the holders of said bonds, whether due or not due, *in pari passu.*" (Trans. 22, 23.)

On the scheme as originally intended, the several bondholders were to have their *bonds paid in full* if there were assets sufficient; and if not, they were to be paid in equal degrees. Now, by the statutes, the bonds are totally trown aside, and the bondholders are to receive only the value of the Confederate money

advanced by them respectively, at different times. The relations of all parties are completely altered; that between the trustees and *cestui que* trusts and between the *cestui que* trusts themselves. Such a complication of relations and radical changes certainly were not within the view of the law makers when they passed these acts; and defendants are not entitled to the benefit of them.

It is true that the Supreme Court of North Carolina, in the case of Alexander vs. Atlantic, Tenn. & Ohio R. R. Co., 67 N. C. Rep., 199, held that those bonds "are presumed to be solvable in money of the value of Confederate currency, subject to evidence of a different intent by the parties." But that case was very briefly argued or considered, and the decision is based upon the single idea, that these Bonds were within the letter of the Statute, as executory contracts within the limited time. Bt the decision of a State Court on a question of mercantile or commercial law does not forestal the opinion of this Court, as was held in Mercer County v. Hacket, 1 Wal 96, and Gelpcke, v. City of Dubuque, 1 Wal. 206.

Third Point. Even if the ordinance and statutes shall be deemed constitutional, and the bonds within their operation, "the parol and other relevant testimony introduced under the ordinance and statutes is fully sufficient to repel the presumption that they were issued, payable in Confederate money.

The ordinance of the convention prescribes that "it shall be competent for either of the parties to show, by parol or other relevant testimony, what *the understanding* was in regard to the kind of currency in which the same are solvable; and in such case the *true understanding* shall regulate the value of the contract."

From the peculiar phraseology of the ordinance, it seems, that we are not confined to the *express terms* of the contract between the parties, but are allowed to examine the matter, in all its bearings and satisfy ourrelves whether in fact the contract was really solvable in Confederate money or not. If no conclusion can be reached then by force of the ordinance Confederate money is presumed.

In the present case, the *date* of the bond is held to

raise the presumption that Confederate money was intended; but the other parts of the bond are relevant to the question, and the very *day of payment* is sufficient of itself to repel that presumption. Ten years after May 1862, the railroad company agrees to pay dollars. Confederate money was but an expedient for meeting the exigencies of the war, wholly temporary in its character, and by none expected to endure for that length of time. Those treasury notes were not money, nor were they even absolute promises to pay money. They were drawn payable to bearer, six months after the ratification of a treaty of peace between the Confederate States and the United States. It is absolutely incredible that any railroad company should make and issue its bonds payable in such conditional promises at such long dates with any hope of realizing anything by the sale of them. No persons could be found who would invest even Confederate money in 1862, at its then value, to be repaid in like currency at the end of ten, twelve or thirteen years, when the value of that currency was then rapidly and steadily declining. To construe the word "dollars" used in these bonds to mean this Confederate money, leads to the *reductio ad absurdum*, which, in the exact sciences, is proof conclusive of the falsity of the proposition. Besides the bonds on their face declare that "they may be converted into the stock of said company *at par*, by the holder." The company was organized in 1858, and the stock paid for in good and lawful money. thereby affording an assurance to the public that the bonds were of like estimation. The usual heading of "The Confederate States of America" has been studiously omitted from the bonds—and the name of the State of North Carolina, alone affords an indication of the kind of currency meant; and that, by statute, was the same as the United States.

Much testimony has been taken and filed in the cause. That these bonds, prior to May, 1870, when plaintiff purchased them, always had been estimated, regarded and treated as payable in good and lawful money, by the officers of the company in their dealings, as well as by the companies themselves; that prior to that time no insinuation of any deficiency whatever had been made as to their value.

These very bonds, in May 17th, 1862, were sold to the Exchange Bank of Columbia. S. C., and were retained by it until the Fall of 1868, when the President of the Bank, Mr. Rufus Johnston, sold them, without the sanction of his Directors, to Mr. William Johnston, the President of both railroads. The latter kept them until May, 1869, when he sold them to the Charlotte and South Carolina Railroad Company, receiving in payment its own bonds at par, and the exchange was an even exchange. [Deposition of Wm. Johnston, pp. 98 and 200.]

The Charlotte and South Carolina Railroad was at that time largely indebted, in good money, to the Atlantic, Tennessee and Ohio Railroad Company, for money borrowed of it in 1867. The Charlotte & South Carolina Railroad Company, it seems, gave its own new bonds to Wm. Johnston in even exchange for those of the Atlantic, Tennessee & Ohio Railroad Company—and with them obtained a credit at par, principal and interest, on the books of the Atlantic, Tennessee & Ohio Railroad Company. [Deposition of C. H. Manson, 124 and 125, and Statement A., page 33.

The Directors of the Exchage Bank being dissatisfied with the disposition made of their A. T., & O., bonds by their President, demand that they should be returned to Mr. Baldwin who as the receiver was entitled to the assets of the Bank. As the bonds were in the possession of the A.T. & O. Co., Mr. Wm. Johnston, received them, by substituting in their place, the new bonds of the Charlotte, Columbia & Augusta R. R. Company, which, by consolidation had now become the name of the Charlotte & South Carolina Railroad Company. This exchange was also at par. No deduction being claimed or allowed for any Confederate value. (Wriston's dep. 66, Manson's dep. 125.)

It is a significant fact, bearing on this question, that the Exchange Bank, with an intelligent head and board of directors should have purchased these bonds at all, if they "understood" that they were solvable in Confederate currency. The President of the two railroads was the brother of Mr. Rufus Johnston, the President of the Bank, and it is presumable that he would have informed his brother and his board of

directors if they were so payable. As prudent men they would not have invested their Confederate money in 1862, to be repaid at the end of ten years, in the same kind of currency, then rapidly depreciating, merely for the six per cent. interest, and that too payable in Confederate money. The only natural conclusion is, that the managers of the Bank were induced to believe, that they were investing their Confederate money in good securities, payable in substantial dollars that would survive the vicissitudes of the war, and prove a judicious outlay. These directors have testified that they never heard of this Confederate pretence until the bonds were returned to the Bank in 1870.

Again, the President, Wm. Johnston, about the 16th of March, 1863, upon a settlement as guardian of S. B. Alexander, his ward. upon his coming of age, paid over to him thirteen of this issue of bonds, and assured him at the time that they were worth more than their face in good money, and that he would put nothing of a Confederate value upon him; that they were so good that he would not let him have them unless he would also take five thousand dollars of the stock of the A. T. & O. R. R. Co. The ward took the bonds and stock at their par value. This was less than one year from their date. (Dep. of S. B. Alexder, 59.)

The Treasurer, M. L. Wriston, who countersigned these bonds, seems never to have "understood" that they were to be charged as Confederate paper, and Mr. C. H. Manson, a subsequent Treasurer, says this view of the subject was never taken by the officers or board of directors, until May, 1870, when the President decided that the bonded debt was subject to the Confederate scale. Prior to that time, under the supervision of the President, he had submitted his printed exhibits of the condition of the company, and stating their bonds as liabilities at their face value; and such exhibits were approved by the stockholders in convention assembled.

When defendants are called upon to answer any material point in a cause, and it is in their own inter-

est, they always gladly embrace the opportunity to answer the same boldly, squarely and without the slightest eqivocation—*if they can do so consistently with the truth.* These defendants, in their joint answer, will not say that, in their understanding, these bonds were to be paid in Confederate money, nor will they say that such was the understanding of those to whom they sold them. They can only say that the Exchange Bank paid Confederate money for them; and, furthermore, "that at the time said bonds were negotiated, it was believed by its officers that said bonds were good securities, and is believed, was so declared by them; but that after July, 1863, no declarations were made by its officers that said securities were regarded otherwise than of Confederate value," which, properly understood, means to say, that whilst they were selling the bonds, prior to July, 1863, they believed and declared that they were good; but after that time no declarations were made at all, and this is their only answer on the material point in the cause.

President Johnston in his deposition (page 100) does no better. On this point it is wholly equivocal; he says: "I do not know that the president or any other officer of said company has repeatedly, or at any time, stated to members of the community or any one, that said bonds were *not* Confederate paper, but payable in sound currency. I have *always* stated that said bonds were *well secured and good before the sealing act* was passed; that both the obligor and endorser were solvent companies." So it seems, notwithstanding the double negatives, that no one has ever said, affirmatively, that these bonds were payable in Confederate money. The company's books furnish strong testimony as to how the company "understood" these bonds were payable. There were many of them, and the Confederate scale was worthy of attention, and the officers should in some way or manner have exhibited a recognition of their depreciated value. But it appears that from January 5th, 1869, to May 10th, 1871, a period of over two years, the At. Tenn. & Ohio Co. was redeeming its bonds, many of them before they were due, and crediting the Ch. & S. C. R. Co. on the debt due from it, at par, (Table A, 76, Wriston's dep. pp. 62, 63, 65.) It should be noted, that in the tabu-

lar statement there are 7 bonds mentioned which were purchased, of course with lawful currency, in 1871, and a profit is entered as of the difference between the amount paid, and the par value.

Such were the acts and declarations of the officers, and the action of the corporation is still more decided and satisfactory.

The stockholders of the Atlantic, Tenn. & Ohio R. Co. held a meeting in Charlotte, N. C., on Wednesday, January 19th, 1870, and their proceedings and reports were published in the "Charlotte Observer" of Jan. 21st, 1870, the same being a newspaper of general circulation. In that meeting, both railroad companies participated (69). The Exhibit of the bond and coupon account is set forth, and it appears that to December 31, 1869, of the original issue of $151,000
there were redeemed to date 118,000
leaving a balance outstanding $32,500

That Co.'s bonds were redeemed by C.& S.C. R. $52,500
" " " " C. C. & A. R. 62,000
" " " " purchase 1,000

$115,500

Other items also appear, for the payment of interest coupons, and all are charged as redeemed and paid in lawful money, without the slightest allusion to Confederate values. The par rate is invariably used.—These were read and adopted (69).

There was a subsequent meeting of the stockholders held in the city of Charlotte, N. C., July 20th, 1870, and the proceedings of the same were published in pamphlet form, and are found in the transcript (63, 94, 78).

It appears that in May 1870, Messrs. John A. Young, E. B. Drake, R. F. Simonton and Thos H. Brem were appointed a committee, "whose duty it shall be to examine into the manner in which the assets of the At. Tenn. & O. Co. have been managed and disposed of, since the meeting of the stockholders in 1866, and that they report the result of their inquiries to the next meeting of the stockholders, *setting forth* and *showing the entire available means* of the company."

The report was made and announced that the construction of the road was commenced in 1859, and was completed to Statesville in March, 1863. That the available capital stock at the commencement of the work was $82,000, and this had been increased during the progress of the work to $173,500. This sum, together with $151.000 of bonds bearing 6 per cent interest, endorsed by the Ch. & S. C. R. Co., constituted the entire available means of the company. During the war the track of the railroad had been torn up and the iron went to the use of other companies; and after the war, the President obtained payment for it.

The report further recites as follows (82): "From the *published* statements of the Treasurer, hereto annexed and which are made a part of this report, it appears that the President has collected of the company's assets the sum of $439,803.72, including proceeds of rails, interest, &c., from 1865, and disbursed in the payment of debts, salaries, &c.. the sum of $200,706.31, leaving in the hands of the company $239,097.41 of the assets *still good.* This amount is subject to *the debts of the company* still due as stated in the said report of the Treasurer, amounting to $114,905, leaving a balance in the treasury of the company of about $125,000 *after paying all its liabilities.* It is proper to state that of *the above debt* of $114,906 there is $57,500 *of bonds not due for two or three years*, which sum added to the $125,000 in the hands of your Treasurer, affords the sum of $182,500, which may be *used in the construction* of your road."

They close their report as follows (85):

"Your committee take pleasure in saying, that, in the prosecution of their investigation, *every facility* was afforded them by your *President* and *Treasurer*, who *were personally present with the books of the company.* Their investigations enable them to testify to *the accuracy* in which the *accounts* of the company have been kept under the present administration, as well as to assure the stockholders that their property *has been closely looked after, their interest diligently prosecuted and guarded, and a faithful account rendered of everything due them, either of savings of their scattered property* or from the accumulated interest upon your funds." The

thanks of the stockholders were tendered to the committee, and their report adopted. (88.)

From the proceedings of the previous meeting in January, the stockholders seem to have manifested a very strong and natural desire, that their road should be reconstructed; and the only obstacle, was a sufficiency of means. Hence, the searching inquiry of the committee, and we may safely conclude that they would have gladly computed the fund to be derived from Confederate scales, as a part of the reconstruction fund, if they supposed there was even slight ground for doing so. No one of the anxious stockholders suggested the idea, and the report of the committee was adopted with thanks. The subject was before the committee a matter of vigilent and anxious inquiry They have with them the President, Mr. Johnston "always diligently watching, guarding and prosecuting the interests of the company, Mr. Manson, the faithful Treasurer, and the books of the company. The accounts have been examined, all the entries of the redemption of the bonds and coupons have been viewed, but from no source does the suggestion come that these bonds are to be reduced in amount, because of their Confederate value. Notwithstanding the great anxiety of the company, to reduce the debt and increase their means, they absolutely and unqualifiedly adopted the report, that they have in hand $239,097.41 in *good money*, and out of that must be retained $57,500 to meet bonds not due for two or three years. Why retain the full face of value of the bonds, when two-thirds thereof will pay the debt? This sum alone (to say nothing of the total $151,000 of bonds issued) if scaled by the North Carolina law, would have furnished $38,333, to be added to the reconstruction fund; and if scaled by the South Carolina law, as appellants now claim, the $57,500 would be paid off with only $30,748.66 in lawful money, making a still greater accession to the reconstruction fund. That such a source of help should have been totally overlooked, is utterly inconsistent with the present defence, and much of the testimony of the President. A *faithful account* of everything has been rendered by the officers and by the committee.

Mr. Baldwin answers to 1st, "Col. Johnston did so inform me." 3rd, he says, "I only recollec indistinctly that Col. Johnston remarked, at some time, that he *should demand* the scaling of the bonds."

Col. L. D. Childs, on the same point, says, "I have no recollection of hearing Col. Johnston, or any one else say that the bonds were subject to being scaled to Confederate money."

From the responses of these gentlemen, we must conclude that if Col. Johnston used the language he says he did, it must have been accompanied with such tone and manner as to make no impression whatever upon Messrs. Carroll, Kennedy and Childs, and but very little upon Mr. Baldwin. Perhaps the language may have been received simply as the mutterings of an irritated mind, excited by a demand to return the bonds, and on that account made no impression. With Col. Johnston himself it seems to have been only an empty threat, and of no practical importance. These bonds were returned to the Receiver in May, 1870. During the same month, the committee of finance was appointed, and in July of the same year, made the report we have already examined. In it we have seen no allusion whatever was made to the confederate character of the bonds, although Mr. Johnston and his treasurer were in conference with the committee affording them every facility; and if he were sincere and earnest in saying to the Bank directors that the bonds were subject to the confederate scale, he was guilty of an inexcusable omission of duty in not advising the committee, or the stockholders themselves, of a fact so important to them, and which they would have been so glad to learn. This omission, is very significant indeed, and may be received as an index of what Mr. Johnston's own "understanding" was. It proves that he had no confidence in his own allegations, and that the present defence is not made in good faith; but solely to annoy the appellees and gain time.

From the testimony, it must be apparent to the court, that it has always been "the understanding" of both corporations, their officers and the public generally, that the "dollars" mentioned in the bonds were intended to be the lawful dollars of the United States,

of the State of North Carolina, and of the Confederate States, which adopted the same term, with the same value, as their standard. The Bonds are payable at long dates, and in dollars, which would *then* be current. No one in 1862, supposed that in 1872 or 1874, Confederate Treasury Notes, promising to pay dollars six months after the ratification of a treaty of peace, would then be current, and no such understanding could have existed between any parties who were sane. But for the scaling act of North Carolina, placing the burden of proof upon the holders, there would and could be no defence set up by the obligors. The extreme difficulty in general, of proving the obligor's understanding, has furnished hope in this case to appellants. So long as they could purchase their own paper on their own terms, they have not failed to redeem it, and credit the profits made. But when refractory holders are found, obstacles are presented to their recovery.

There are various kinds of negotiable paper. Some for limited localities; some intended for the widest circulation. Bank bills are but negotiable notes, but they bear the impress of dollars to such a degree that they circulate as quasi money. So do these municipal and railroad bonds, of modern invention, rank with bank bills, and by their very impress represent money. Their representative character should not be impaired or impeached, except in the strongest cases upon the most satisfactory evidence. Appellants have offered no evidence to impair their own obligations, and are resting wholly upon their adversaries. The appellees placed in a very difficult position by the scaling acts and ordinance have done far better than could have been expected, the whole proof lying in the breasts of those who are identified with the appellants.

The foregoing views have been made as to the *issues* between the parties on the record, as deduced from the pleadings. For the first time, however, without previous admonition, the counsel for the appellees in his *argument* introduces three other matters by way of defence, not included in the pleadings, and absolutely waived by his clients. He now insists that the appellants cannot have a decree, for—

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The foregoing views have been made as to the *issues* between the parties on the record, as deduced from the pleadings. For the first time, however, without previous admonition, the counsel for the appellees in his *argument* introduces three other matters by way of defence, not included in the pleadings, and absolutely waived by his clients. He now insists that the appellants cannot have a decree, for—

2d. The said bonds and coupons are void for usury.

3rd. That the Atlantic, Tennessee & Ohio Railroad company had, by its charter, only authority to "borrow money," and mortgage its franchise to secure the payment thereof. That Confederate currency is not money and that the bonds and coupons are void.

4th. That the bonds have once been "redeemed" and no authority is shown for their re-issue and therefore there can be no recovery on said bonds.

These matters in Bar appear for the first time i the argument, although waived by the appellees in th pleadings. No proof has been taken on any one o *these points* and the only evidence cited by the counse has been purely incidental, with reference to the issu between the parties.

The defendant corporations in their answer say:

"For further answer, defendants aver that they have at a times been ready to adjust said indebtedness upon a fa and just basis of value of said bonds and due coupons i lawful money of the United States, and a readiness and abilit at all times to discharge said liabilities as soon as their valu could be ascertained and are now ready to do so, but plaintif demanded payment in full of said bonds and all accrue interest in lawful money of the United States, with which unrea sonable demand defendants refused to comply (Trans. 31.) An again, "Further answering, defendants state that at the time sai bonds were negotiated it was believed by its officers that sai bonds were good securities, and as is believed, was so declared b them. (32.)

The trustees, Messrs. Wilson & Mitchell, in their an wer, say,

"They have been prevented from so doing, (that is selling) o account of the conflict or difference between plaintiffs and th officers of said company, *as to the measure of value of the bonds of th company held by the plaintiffs, the latter claiming payment in full o said indebtedness in lawful money of the United States, and the forme claiming that said bonds are solvable in Confederate currency, and a such are legally liable to be scaled to their true value in United State money.*

Further answering respondents say that they are ready an willing to perform the trusts devolved upon them by said dee of trust and submit to such direction and decree as may be mad in the premises. Having answered, &c."

No other issue is presented by the pleadings than the value of the dollars in the bonds mentioned There is no pretence in the case, that the Bonds ar void, or the obligors barred of recovery, and no evi dence has been taken or even critical inquiry made a

to the positions taken by counsel in his argument. In Equity, the issues between the parties are to be looked for only in the pleadings, and that is their sole object and end.

"But it may serve to make the *real nature of pleadings in Equity*, in a technical sense, better known to state, that they consist of the formal written allegations or statements of the respective parties on the record, to maintain the suit, or to defeat it, of which when contested in matters of fact they *propose to offer proofs*, and in matters of law arguments to the court." (Story's Eq. pl. 3 in note.) Rules of Practice for courts of Equity of the United States, Nos. 66 and 67.

"Every defence which is intended to be relied on, ought to be brought forward distinctly in the answer; for if not made in the answer, it cannot be urged on the hearing."

Bailey vs. Wilson, 1 Dev. and Battles Eq. 182.

Gatlin vs. Darden, 1 Dev. and Bat. Eq. 72.

But first as to the question of Usury, and it is argued "that the question is to be determined by the laws of North Carolina." Between whom the contract for usurious interest was made is not stated, whether between the two railroad companies, who are the obligor and obligee therein, or with the Exchange Bank who bought them, or the present holders.

They were made in North and Carolina, sold in South Carolina; but did any corrupt intent exist at the time, is a question requiring some proof. It must have existed, otherwise it will not be presumed, at least in North Carolina.

"In cases of usury the question of a corrupt intent must be submitted to the jury. And it is error in the court to assume such intent, from the fact that a bond for money borrowed sets forth a larger sum than the amount actually borrowed. Kerr vs. Davidson, 13 Iredell (N. C.) 454.

To avoid a security as usurious, you must show that the agreement was illegal from its origin. Rhodes vs. Fullenwider, 3 Iredell, 415.

A contract good in its creation is not avoided by a subsequent usurious consideration. Moore vs. Hylton, 1 Dev., Eq. 429.

The purchase of a negotiable security for less than

Swydam v Bartle
10 Paige 97. 94

the real value is valid. Ballinger vs. Edwards, 4 Ire. Eq., 449.

Bonds sold by railroad company less than par, good. Woods vs. Lawrence County, 1 Black, 386.

In equity a debtor, pleading usury to obtain relief, should bring into Court the principal debt and legal interest which he admits to be due, as in asking, he must do equity.

Ballinger vs. Edwards, 4 Ire. Eq. 449.

This defence being under a statute, like all statutory defences, should be *pleaded in Bar.* (Story's Commentaries, Equity Pl., § 749–750–752.)

Counsel in his brief has cited only a part of the Usury Law of North Carolina. There is another statute on the subject, to be found in the same Revised Code, chapter 50, Sec. 5, which reads as follows:

"No conveyance or mortgage made to secure the payment of any debt, or the performance of any contract or agreement shall be deemed void as against any purchaser for valuable or other good consideration of the estate or property conveyed, sold, mortgaged or assigned, by reason that the consideration of such debt, contract or agreement shall be forbidden by law, if such purchaser at the time of his purchase, shall not have notice of the unlawful consideration of such debt, contract or agreement."

In a case under this statue, it was ruled by the supreme court, "that the defence of usury could not avail the maker, and that the mortgage given to secure the payment of the principal and interest due thereon could be enforced." Coor vs. Spicer, 65, N. C. 401.

There is no evidence that either of the appellees had notice of any usury whatever, at any time, or had notice that the Exchange Bank bought these bonds with Confedeate money. The Carolina National Bank was not in existence until 1868, and then L. D. Childs was its President. He even did not know that the Exchange Bank owned these bonds until a short time before the receiver was appointed (in Nov., 1869.) He did not know in March 9th, 1871, what was paid for them. (Trans. 128.)

C. H. Manson, the remaining appellee, became Secretary Treasurer and general accounting agent of the A. T. & O. R. R. Co., about March, 1867, and he remained in connection with the two companies until Dec. 1870. Nothing in his testimony discloses

that he even knew that the Exchange Bank had paid Confederate Treasury Notes for the bonds, or there was any usurious contract whatever. The only evidence therefore is that of William Johnston, the single witness of the appellees, "that he advised the directors of the Bank that they the bonds were subject to the Confederate scale; that he well recollects informing Col. Childs, C. H. Baldwin, and others of this, and it was the subject of deliberate conversations at more than one interview with said directors." All these parties deny the statement absolutely, except Mr. Baldwin, who also at first denied it, but on cross-examination, said, "I only recollect *indistinctly* that Col. Wm. Johnston remarked *at some time* that he should demand the scaling of the bonds." (122.) He is the only party who says the Exchange Bank paid Confederate money for the bonds. Notice to Mr. Baldwin is not notice to the appellees, and the single contradicted testimony of one witness is wholly insufficient to fix notice upon the appellees. The appellees must, therefore, be held to be, as they claim in their bill to be, without denial of appellants, purchasers for value paid *bona fide*, without notice of any exception whatever, the bonds aforesaid.

Next, "the company was not authorized to borrow Confederate currency, and so the bonds are void."

It is assummed in argument that the 19th section of the Laws of 1854–55 correctly quoted in the brief is the only power the company possessed.

In their answer, appellees say, and admit "that for the purpose of prosecuting the construction of the road, the A. T. &. O. R. Co. issued its bonds for the purpose of raising *money*, and they were guaranteed by the Ch. & So. Ca. R. Co." (29) and Mr. Johnston, the President of both roads, testifies (97) that these bonds were issued by virtue of authority from the stockholders of the A. T. & O. Co. and by authority of the stockholders of the Ch. & So. Ca. Co. they were endorsed.

They were then issued and endorsed for the legitimate purpose of raising *money*, and within the scope of the power conferred in the 19th section of the charter.

Where bonds on their face import a compliance with the law under which they issued, the purchaser is not bound to look further.

Know county v. Aspinwall 21 How. 539 &c.

If bonds lawful in their inception, are misapplied to unlawful purposes that cannot affect them in the hands of subsequent bona fide purchasers. If the parties chose to exchange their bonds for any thing else, than money, in the hands of others their obligation cannot be impaired.

But the clause cited, does not show the full authority of the company. Many amendments of this charter have been made since 1855, of some of which we may know nothing as the private acts during the war were not published. But in the laws of 1860–61 we find an act ratified the 23rd day of February, 1861, entitled "An act to amend an act entitled an act to incorporate the Atlantic, Tennessee & Ohio R. R. Co. ratified February 15th, 1855." In the latter part of the 3rd section, it is enacted "The Company incorporated by this act of amendment shall have all the general powers that are by the statute concerning corporate companies conferred on corporations."

By the 21st section of this latter act (chapter 26 of the revised code of N. C.,) it is enacted: "No corporation created by letter's patent, shall, under any pretence, engage in the business of banking; *provided*, however, that in the transaction of their business they may make and take, and endorse, when necessary, all such bonds, notes and bills of exchange, as the particular business may require."

It would seem, therefore, that this company might take the notes of any person or State or Nation, provided they would not make it a pretext for banking. Even Confederate promisory notes were not interdicted, though they were not "*money*."

"The bonds, appearing from the evidence introduced by plaintiff, to have been redeemed by the company, the plaintiffs have proved themselves out of court, and shown that they have no right to recover said bonds under any aspect of the law."

This position taken in the argument only, is wholly

incompatible with the averment in the answer: "of a readiness and ability at all times to discharge said liabilities as soon as their value could be ascertained and are now ready to do so." (31.) No plea of payment or other plea in law is presented in the pleadings.

If the word redeemed is used loosely in the pleadings and testimony, still the manner of that redemption is set forth, so as to show the exact measure of its import. The whole issue and re-issue appears on the Treasurer's books, visible to every stockholder or committee of finance.

The testimony in the case was introduced simply to meet the requirements of the ordinance and statutes and repel the presumption that the bonds were payable in Confederate currency. It was intended to prove the "*understanding*" of the railroad companies, and all their officers, by showing that so long as they could get them on their own terms, *they understood* that they were to be paid in lawful currency, and so entered them, but so soon as the officers of the Exchange Bank denied that they were extinguished, and required them to be returned to the vaults of the Bank, as the property of the Bank, then for the first time, was it alleged and pretended that these bonds were only Confederate paper, and a scale would be demanded. Whilst the proof offered uses the word "redeemed," it shows that that was the language of the President and other officers of the railroad company, and that these bonds had been entered on the Treasurer's books as if they had been redeemed at par, and thus extinguished. But the proof discloses that notwithstanding the use of the word, the Exchange Bank and the subsequent holders, have insisted and do insist that there never was any legal redemption whatever; that the transfer of the bonds to William Johnston by the President of the Bank was made without the assent and authority of the Managers of the Bank, and the transfer was repudiated and a return of the bonds by William Johnston, as an individual, was insisted upon. He, after some time, did return them to the proper owner, but how he got possession, the Bank did not inquire. That was a question between him and those he represented. It seems *now*, in the testi-

mony taken, that they were obtained from the A. T. & O. R. R. Co., and he was required to deposit in their place the bonds of the C. C. & A. R. R. Co. to the amounts of $33,000 with the accrued interest, $731.50, and $1,768.50 in cash. (66.]

Whether any action was taken by the Directors of the A. T. & O. R. R. Co. or whether any was necessary to authorize Mr. Johnston to exchange these bonds does not appear from the testimony. But it does appear that such exchange was ratified by the stockholders in general meeting held the 20th of July, 1870, when the Finance Committee made their report respecting the accuracy of the Treasurer's Books, and the state of these very bonds; which Report was adopted with thanks.

There is "one aspect of the law" in which the appelees have a right to recover these bonds even if they were redeemed.

"Notes remain negotiable even after payment, so far as respects all parties, who shall knowingly negotiate the same afterwards; for in such a case, the negotiator cannot prejudice any other persons and will charge themselves." (Story on Prom. Notes, chap. 4 § 180.)

The bonds were not due, were issued and re-issued for value received—and their presentation in market was by the authorized officer and agent of both railroad companies, who by their action at Charlotte in in July, 1870, endorsed and ratified their re-issue and everything theretofore done in relation to them. If the re-issue as a new act is insisted upon, then it acts as a two-edged sword cutting both ways. It cannot be pretended that there was any Confederate values or dollars in circulation at the date of the re-issue: and the obligors are to be presumed to have meant the dollars of that date. It would therefore seem that in any aspect of the law and facts the appellees are entitled to their decree for the full value of the bonds in lawful currency.

H. W. GUION.
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